

EXHIBIT D

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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PHILIP R. MCHUGH, :
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Plaintiff, :
:
:
vs. : CASE NO.
FIFTH THIRD BANCORP, et : 1:21-cv-00238
al., :
:
Defendants. :
-----:

Videotaped
Deposition of: NICHOLAS KEVIN AKINS
Taken: By the Plaintiff
Pursuant to Notice
Date: July 2, 2024
Time: Commencing at 9:39 a.m.
Place: Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
Before: Wendy L. Raymer, RPR, CRR
and
Connie Ihle-Adkins,
Videographer
Notaries Public-State of Ohio

1 APPEARANCES:

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16
17 Also Present:

18 Philip R. McHugh
19 Brian Thomas, Esq., Fifth Third Bancorp

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<p>1 THE VIDEOGRAPHER: We are on the videotape 2 record. Today is Tuesday, July 2, 2024. The time 3 is 9:42 a.m. We're here today to take the 4 deposition of Nicholas K. Akins pursuant to Rule 5 30(b)(1) deposition, and the case style is Philip 6 R. McHugh versus Fifth Third Bancorp, et al., 7 United States District Court, Southern District of 8 Ohio, Western Division, Case No. 1:21-cv-00238. 9 Will the attorneys now introduce themselves 10 and state who they represent?</p> <p>11 MR. SABA: Peter Saba on behalf of the Plaintiff Philip R. McHugh.</p> <p>12 MR. SMITH: Joshua Smith on behalf of the Plaintiff Philip R. McHugh.</p> <p>13 MR. CIOFFI: On behalf of the defendant, Fifth Third Bank, Michael Cioffi and Collin Hart of Blank Rome, and Brian Thomas of Fifth Third Bank.</p> <p>14 MR. SABA: And additionally attending via Zoom is Attorney Bailey Sharpe from our office.</p> <p>15 THE VIDEOGRAPHER: And would the court reporter please swear in the witness?</p> <p>16 (Witness sworn.)</p> <p>17 MR. CIOFFI: Peter, before you begin, let me say something on the record. This deposition is 18 being taken over the defendant's objection given</p>	Page 4	<p>1 And, Peter, as counsel for the plaintiff, you 2 agreed that the scope of this would be limited, 3 that it would be focused, and this would not be a 4 simple repetition of the three other director 5 depositions.</p> <p>6 MR. SABA: Michael, we completely disagree 7 with your summary of the purpose for this 8 deposition, and there was no limitation 9 specifically as to scope. The only discussion was 10 we would try and keep this under six hours and that 11 would be the goal, and that was the representation 12 that was made. There was no ruling. There was no 13 requirement. There was no limitation.</p> <p>14 We're going to seek to do this in as efficient 15 manner as possible, but we disagree with your 16 representation of what brings us here today and 17 what the parameters are for the deposition.</p> <p>18 MR. CIOFFI: Well, the record will speak for 19 itself, but please go ahead.</p> <p>20 NICHOLAS KEVIN AKINS, 21 of lawful age, a witness herein, being first duly sworn 22 as hereinafter certified, was examined and deposed as 23 follows:</p>	Page 6
<p>1 the fact that we're beyond now the limit under the 2 civil rules for the number of depositions, and also 3 given the fact that this is the fourth director 4 deposition. So the defendant objected.</p> <p>5 The court permitted this deposition, and the 6 record is pretty clear about this, provided that 7 the scope of the deposition is limited. It doesn't 8 repeat everything you've asked the other directors 9 and the other witnesses.</p> <p>10 And you agreed in a couple of conferences in 11 December of 2023 and in 2024 that the scope would 12 be limited and it would not be repetitive or 13 redundant. It would concern this particular 14 witness's understanding of the decision and the 15 decision-making process. And while the court 16 speculated that perhaps it could be done in 30 17 minutes, the court did not limit the deposition to 18 30 minutes.</p> <p>19 However, the court said the following, and I'm 20 reading from the court statement. At the 21 February 20, 2024 conference in which the court 22 said, but I think if you get straight to the point, 23 I mean, it's really simple. Was there any 24 discussion of age? What information did you rely 25 on? I mean, it's not complex.</p>	Page 5	<p>1 EXAMINATION</p> <p>2 BY MR. SABA:</p> <p>3 Q. Mr. Akins, can you go ahead and state your 4 name for the record, please?</p> <p>5 A. Nicholas K. Akins.</p> <p>6 Q. Have you ever had your deposition taken 7 before?</p> <p>8 A. Yes.</p> <p>9 Q. How many times have you had your deposition 10 taken?</p> <p>11 A. Twice.</p> <p>12 Q. As a reminder, I'm going to be asking you a 13 series of questions. For the sake of the court 14 reporter, I need you to answer verbally, no shaking or 15 nodding of the head, notwithstanding that we're going to 16 have this on video.</p> <p>17 A. Yes.</p> <p>18 Q. For the transcription record, we still need 19 that verbally. Additionally, if you can wait for me to 20 finish my question before you answer, and I'll try to do 21 the same before I ask you another question, also makes 22 for a clearer record.</p> <p>23 With respect to if you need to take a break at 24 any time, you can just let us know that and we can go 25 ahead and take a break, but I'll need you to answer the</p>	Page 7

<p>1 question that's standing at that point in time before we 2 take the break. Do you understand all those 3 instructions?</p> <p>4 A. Yes.</p> <p>5 Q. What is your address?</p> <p>6 A. 6 Highgrove Farms, New Albany, Ohio 43054.</p> <p>7 Q. How long have you lived there?</p> <p>8 A. Since 2017.</p> <p>9 Q. Who do you live there with?</p> <p>10 A. My wife.</p> <p>11 Q. How long have you been married?</p> <p>12 A. 41 years.</p> <p>13 Q. What's your date of birth?</p> <p>14 A. 8/26/60.</p> <p>15 Q. Who recommend -- excuse me. 16 You explained that you've been deposed twice 17 before; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. What were the purpose of those two 20 depositions?</p> <p>21 A. One was a US bankruptcy case. The company I 22 worked for was trying to acquire another utility that 23 was going through bankruptcy, so I was deposed in that 24 case. And then the other is an SEC case with AEP, 25 American Electric Power, who I was the former chair and</p>	<p>Page 8</p> <p>1 A. I believe it was Marsha Ryan at the board 2 meetings, saying I was about to be deposed.</p> <p>3 Q. Marsha Ryan?</p> <p>4 A. Excuse me. Marsha --</p> <p>5 Q. Williams?</p> <p>6 A. Williams.</p> <p>7 Q. Anyone else?</p> <p>8 A. No.</p> <p>9 Q. Did you speak to any employees at Fifth Third 10 Bank about the Philip R. McHugh case?</p> <p>11 A. Well, I mentioned to Tim I was being deposed.</p> <p>12 Q. Tim Spence is who you're referring to?</p> <p>13 A. Tim Spence, yeah.</p> <p>14 Q. Other than these conversations with Mr. Spence 15 or Ms. Williams with respect to your deposition, have 16 you had any conversations with any of the other board 17 members about the Phil McHugh litigation?</p> <p>18 A. No.</p> <p>19 Q. Have you had any conversations with any 20 employees at Fifth Third Bank about the Phil McHugh 21 litigation?</p> <p>22 A. No.</p> <p>23 (Plaintiff's Exhibit 1 is marked for 24 identification.)</p>
<p>1 CEO. That was a case involving the company's 2 interactions relative to HB6.</p> <p>3 Q. What did you do to prepare for today's 4 deposition?</p> <p>5 A. I looked at materials that fit the -- that was 6 supplied by my counsel.</p> <p>7 Q. Did you review any of the prior depositions 8 that were taken in this case?</p> <p>9 MR. CIOFFI: Objection. Whatever he reviewed 10 was at the instruction of counsel. I should say at 11 the beginning, as I did in the other depositions, 12 we represent the defendant Fifth Third Bank, but we 13 also represent Mr. Akins personally pursuant to a 14 joint representation agreement. So whatever he 15 reviewed was reviewed at our request and I'm not 16 going to let him describe those documents.</p> <p>17 BY MR. SABA:</p> <p>18 Q. Did you speak to any board members in advance 19 of this deposition regarding the case with Phil McHugh?</p> <p>20 A. There were a couple of conversations where I 21 talked about the deposition, the timing of depositions, 22 things like that.</p> <p>23 Q. What about the content of the deposition?</p> <p>24 A. No content.</p> <p>25 Q. Any testimony -- who did you speak to?</p>	<p>Page 9</p> <p>1 BY MR. SABA:</p> <p>2 Q. Mr. Akins, I've handed you what has been 3 marked as Exhibit Number 1. Have you ever seen this 4 document before?</p> <p>5 A. Yes.</p> <p>6 Q. When did you see this document?</p> <p>7 A. In preparation for this deposition.</p> <p>8 Q. Let me represent to you this is an amended 9 notice for your deposition for today, and it includes 10 attached to it a request for production of documents 11 which begins on page 3 of Exhibit 1; do you see that?</p> <p>12 A. Which page?</p> <p>13 Q. Page 3.</p> <p>14 A. I don't remember seeing this one.</p> <p>15 Q. You do not see where at the top --</p> <p>16 A. No, I don't remember seeing the document. I 17 don't know that I have seen this, but go ahead.</p> <p>18 Q. You don't recall seeing this before, just to 19 be clear for the record?</p> <p>20 A. No, I don't recall seeing it.</p> <p>21 Q. All right. Let me represent to you, this was 22 a document that was sent to -- who is now represented to 23 be your counsel with respect to producing documents for 24 today's deposition. Do you have any documents with you 25 today?</p>

<p style="text-align: right;">Page 12</p> <p>A. No.</p> <p>MR. CIOFFI: Let me say for the record in response to that question that the documents were searched by -- for by counsel and provided to you, either in response to this particular production or as a result of the earlier productions, but there is nothing in response to this particular request for production of documents that exists that has not been produced.</p> <p>BY MR. SABA:</p> <p>Q. Mr. Akins, let me represent to you, this was a request directed specifically to you for today's deposition. And if I could refer you to page 6 of this document, please.</p> <p>A. Uh-huh.</p> <p>Q. Of Exhibit 1.</p> <p>MR. CIOFFI: And I'm going to say for the record that as his counsel, we responded to this particular request.</p> <p>BY MR. SABA:</p> <p>Q. And referring to request for production of documents number 1, do you see where that is, about two-thirds of the way down on page 6?</p> <p>A. Yes.</p> <p>Q. The first request refers to "communications</p>	<p style="text-align: right;">Page 14</p> <p>A. I didn't have any there neither.</p> <p>Q. Subcategory E is, "Any facts upon which you and any other director relied upon when identifying and/or selecting candidates for the position of president and/or CEO of Fifth Third."</p> <p>A. No, I didn't have any.</p> <p>Q. Subcategory F would be any documents regarding that refer to Phil McHugh.</p> <p>A. I didn't have any.</p> <p>Q. And subcategory G is any documents that would refer to Tim Spence.</p> <p>A. No, I didn't have any.</p> <p>MR. CIOFFI: Counsel, I'm going to state again for the record to the extent these documents exist in the books and records of Fifth Third Bank or the board, they have been produced to you, to the extent they exist.</p> <p>MR. SABA: Okay.</p> <p>BY MR. SABA:</p> <p>Q. And specifically, we're asking for your documents, Mr. Akins.</p> <p>A. Right, that's what I understand.</p> <p>MR. CIOFFI: You're asking for his personal documents?</p> <p>MR. SABA: Correct.</p>
<p style="text-align: right;">Page 13</p> <p>between you and any other director or officer of Fifth Third which refers, mentions, or otherwise relates to;" and the first subtitle, "Succession planning for the position of president and/or CEO of Fifth Third"; do you see that?</p> <p>A. Yes.</p> <p>Q. Did you ever actively look for or search out any such communications?</p> <p>A. I didn't have any.</p> <p>Q. Did you look for them?</p> <p>A. I didn't need to. I didn't have any.</p> <p>Q. Okay. Subcategory B is, "Identified and/or selected candidates for the position of president and/or CEO of Fifth Third."</p> <p>Did you have any documents in response to that category?</p> <p>A. I did not have any.</p> <p>Q. Subcategory C is, "Processes or timelines, whether proposed or final, with respect to the identification and/or selection of candidates for the position of president and/or CEO of Fifth Third."</p> <p>A. I didn't have any.</p> <p>Q. With respect to 1D, "Development of potential candidates for the position of president and/or CEO of Fifth Third."</p>	<p style="text-align: right;">Page 15</p> <p>THE WITNESS: That's the way I understand the question.</p> <p>MR. CIOFFI: As long as it's clear on the record that's what you're requesting.</p> <p>THE WITNESS: Yeah.</p> <p>BY MR. SABA:</p> <p>Q. With respect to number 2, it asks for, "Any communications as defined above between you and Philip McHugh."</p> <p>A. I didn't have any.</p> <p>Q. The third category is, "Any communications between you and Timothy Spence."</p> <p>A. I didn't have any.</p> <p>Q. And just to be clear, "The words communications or communicate mean any correspondence, disclosure, transfer, exchange of information, whether oral or written, and whether in person, by telephone, mail, email, telecopy, text message, or other document form."</p> <p>Did you understand that in responding to that question?</p> <p>MR. CIOFFI: Again, objection to the form. It's overbroad and includes information that is not discoverable.</p>

<p>1 BY MR. SABA:</p> <p>2 Q. Did you understand that being the definition 3 of communication in responding to that question?</p> <p>4 A. Can you repeat the question?</p> <p>5 Q. Sure. The definition of communication as 6 provided in this document means any correspondence, 7 disclosure, transfer or exchange of information whether 8 oral or written and whether in person, by telephone, 9 mail, email, telecopy, text message, or other document 10 form.</p> <p>11 A. I haven't had any communication relative to 12 the details of this case.</p> <p>13 Q. And going back again with respect to that 14 understanding of communication, do you have any 15 communications between you and Philip McHugh?</p> <p>16 A. No.</p> <p>17 Q. Did you ever have any communications between 18 you and Philip McHugh?</p> <p>19 A. No.</p> <p>20 Q. Number 3 is, "Any communications between you 21 and Timothy Spence"; do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Did you have any communications between you 24 and Tim Spence?</p> <p>25 A. About this case?</p>	<p>Page 16</p> <p>1 whether proposed or final, with respect to the 2 identification and/or selection of candidates for the 3 position of president and/or CEO of Fifth Third."</p> <p>4 A. I don't have those documents.</p> <p>5 Q. Subcategory D is, "Development of potential 6 candidates for the position of president and/or CEO of 7 Fifth Third."</p> <p>8 A. I don't have those.</p> <p>9 Q. Subcategory 4E is, "Any facts upon which you 10 or any other director relied upon when identifying 11 and/or selecting candidates for the position of 12 president and/or CEO of Fifth Third."</p> <p>13 A. I don't have that.</p> <p>14 Q. Subcategory F is referring specifically to 15 Philip McHugh.</p> <p>16 A. No, I don't have that.</p> <p>17 Q. And any documents you retained regarding 18 Timothy Spence?</p> <p>19 A. No.</p> <p>20 Q. You don't have any documents?</p> <p>21 A. I don't have any documents.</p> <p>22 Q. What's the extent of your education?</p> <p>23 A. I have a master's in science and electrical 24 engineering, a bachelor of science in electrical 25 engineering as well.</p>
<p>1 MR. CIOFFI: Yeah, objection to the form of 2 the question. It's overbroad. It's not 3 discoverable. Irrelevant. If you confine it to 4 the issues in this case, I'll allow him to answer.</p> <p>5 THE WITNESS: Can you be more specific?</p> <p>6 BY MR. SABA:</p> <p>7 Q. Well, generally speaking, have you 8 communicated with Tim Spence by text message or phone or 9 email?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you have any communications with 12 Mr. Spence regarding any aspect of this litigation of 13 this case?</p> <p>14 A. No. Other than I'm having a deposition.</p> <p>15 Q. Request number 4 asks for, "All documents 16 created, received, or obtained by you which refer, 17 mention, or otherwise relate to;" and the first under 18 category A, "Succession planning for the position of 19 president and/or CEO of Fifth Third."</p> <p>20 A. I don't have any documents for that.</p> <p>21 Q. Subcategory 4B is, "Identified and/selected 22 candidates for the position of president and/or CEO of 23 Fifth Third."</p> <p>24 A. I don't have any documents on that.</p> <p>25 Q. Subcategory 4C is, "Processes or timelines,</p>	<p>Page 17</p> <p>1 Q. Where did you obtain those?</p> <p>2 A. Louisiana Tech University.</p> <p>3 Q. When did you obtain those?</p> <p>4 A. Bachelor's in 1982. Master's in 1986.</p> <p>5 Q. When did you first become a board member at 6 Fifth Third?</p> <p>7 A. I believe it was October of 2013.</p> <p>8 Q. Were you employed at that time?</p> <p>9 A. Yes.</p> <p>10 Q. Where did you work?</p> <p>11 A. American Electric Power.</p> <p>12 Q. What was your position with American Electric 13 Power?</p> <p>14 A. Chairman, president, and the CEO.</p> <p>15 Q. When did you become president of American 16 Electric Power?</p> <p>17 A. November 12, 2011. Oh, excuse me, January 1, 18 2011 for president.</p> <p>19 Q. How long had you been employed with American 20 Electric Power before you became president?</p> <p>21 A. Well, that was 2011. So 29 years. 1982 to 22 2011 is -- I think that's right.</p> <p>23 Q. You went to work for American Electric Power 24 out of college?</p> <p>25 A. Yes. Well, actually, I went to work for</p>

<p style="text-align: right;">Page 20</p> <p>1 Southwestern Electric Power Company, which was part of 2 Central and Southwest Corporation. And then AEP 3 acquired Central and Southwest in 2000. So technically, 4 yes.</p> <p>5 Q. Essentially you worked for the same company up 6 until the time that you became president; is that right?</p> <p>7 A. That's right.</p> <p>8 Q. You were a lifer there; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And they still made you CEO and president even 11 though you were a lifer; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. What's the benefit of making a lifer the CEO 14 and president of the company?</p> <p>15 MR. CIOFFI: Objection.</p> <p>16 THE WITNESS: Well, actually, I would say that 17 while it's not a necessity, I certainly had the 18 benefit of knowing the internal operations of the 19 company. I had been in various operating 20 utilities, and then with the experiences of being 21 in the utility business.</p> <p>22 BY MR. SABA:</p> <p>23 Q. You ran several different branches of the 24 company; is that right?</p> <p>25 A. Yes.</p>	<p>1 A. 5.6 million.</p> <p>2 Q. Where does AEP currently stand on the Forbes 3 500?</p> <p>4 A. It varies from year to year, but it's a 5 Fortune 200 company.</p> <p>6 Q. Roughly around 185, around that number; does 7 that sound right?</p> <p>8 A. That sounds about right.</p> <p>9 Q. How long did you remain chairman, president -- 10 let me go back.</p> <p>11 How long did you remain president of AEP?</p> <p>12 A. From 2011 to January -- let's see.</p> <p>13 January 1st of '23. August, excuse me.</p> <p>14 I get president -- it all changed with the 15 transition. So president, August of '23.</p> <p>16 Q. And what about with respect to CEO, how long 17 did you remain CEO for AEP?</p> <p>18 A. I was CEO -- hold on a second. August of '22 19 for president. January 1st of '23, I turned over the 20 CEO title and stayed on as executive chair of AEP until 21 October of '24 -- or excuse me, October of '23.</p> <p>22 Q. Is it a fair statement that your role in -- as 23 president and CEO of AEP was a demanding job; is that 24 right?</p> <p>25 A. Yes. Much different than an executive vice</p>
<p style="text-align: right;">Page 21</p> <p>1 Q. You understood the history of the company; is 2 that right?</p> <p>3 A. Yes.</p> <p>4 Q. And as you indicated, that the utility 5 industry is heavily regulated; is that a fair statement?</p> <p>6 A. Yes.</p> <p>7 Q. As a result of your history with the company, 8 you had an understanding of the regulations affecting 9 that industry; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Was your mother a flight attendant?</p> <p>12 A. No.</p> <p>13 Q. Okay. And they still made you CEO and 14 president?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. How large is AEP?</p> <p>17 A. Depends on what measure you use. Are you 18 asking market cap or --</p> <p>19 Q. Sure, let's start with market cap.</p> <p>20 A. Market cap's about 46, 47 billion. It was 50 when I was there. It's over 11 states, one of the 22 largest electric utilities in the country.</p> <p>23 Q. Number of employees?</p> <p>24 A. 18,000.</p> <p>25 Q. Number of customers served?</p>	<p>1 president. There is no comparison.</p> <p>2 Q. What do you mean by that?</p> <p>3 A. As an executive vice president, I always 4 thought, you know, I worked as hard and as many hours, 5 that kind of thing, I could be CEO of the company.</p> <p>6 After I became CEO of the company, I realized it's a 7 very different position. You're in a glass house.</p> <p>8 Employees are looking at every mannerism, every comment 9 you make. Investors are looking at every comment you 10 make. The commitment relative to the schedule is 11 significant.</p> <p>12 You have to be quick on your feet and you have 13 to be very adaptable. You have to be able to talk to 14 the president or the governor, in the same day talk to 15 the -- talk to the frontline employees and be able to 16 identify with them. Very different role.</p> <p>17 Q. And it's 24/7; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. You're constantly on with respect to issues 20 that may arise; is that right?</p> <p>21 A. That's correct. Just to be clear, I am 22 sleeping sometimes. Okay. All right. I'm using 24/7 23 as --</p> <p>24 Q. I understand.</p> <p>25 A. All right.</p>

<p>1 Q. During the period of 2015 through October of 2 2020, how many different boards did you serve on? 3 A. Only the -- it was an AEP board, obviously, 4 American Electric Power board, and Fifth Third's board. 5 I was only as an active CEO, typically you can only be 6 on one additional board, and Fifth Third was that board. 7 There were other not-for-profit boards that I was 8 involved with.</p> <p>9 Q. What were the not-for-profit boards?</p> <p>10 A. I was chair of the Ohio Health board. The 11 board of the Rock and Roll Hall of Fame. Let's see. 12 Several industry-related boards.</p> <p>13 Q. Would that be the Institute of Nuclear Power 14 Operators?</p> <p>15 A. Institute of Nuclear Power Operators, the 16 Edison Electric Institute, the Global Sustainable Energy 17 Partnership, the -- let's see, INPO, Institute of 18 Nuclear Power Operators. Let's see, there was the 19 business round table, US Business Round Table, the Ohio 20 Business Round Table. I'm trying to think of the 21 others. I think that's about it.</p> <p>22 Q. OBRT?</p> <p>23 A. The Ohio Business Round Table. I chaired that 24 as well.</p> <p>25 Q. How often would each of those charitable</p>	<p style="text-align: right;">Page 24</p> <p>1 BY MR. SABA: 2 Q. Okay. It also eventually led to litigation 3 against you personally with respect to a shareholder 4 claim against AEP and you; is that correct? 5 A. There were derivative shareholder claims. 6 Q. Okay. That began in August of 2020; is that 7 right? 8 A. I believe that's about right. 9 Q. Okay. How many times have you been sued 10 personally? 11 A. I've never been sued personally other than 12 through my role as CEO of AEP and as a board member of 13 AEP. 14 Q. How often did that happen as a board member or 15 CEO of AEP? 16 MR. CIOFFI: Objection. Beyond the scope of 17 discovery in this case. I'll allow you to answer, 18 if you know. 19 THE WITNESS: I don't recall how many times. 20 BY MR. SABA: 21 Q. When did you first meet Greg Carmichael? 22 A. I don't recall specifically, but it would be 23 about 2014, maybe. 24 Q. How would you describe your relationship with 25 Greg Carmichael?</p>
<p>1 boards meet? 2 A. Typically on a quarterly basis. 3 Q. Going back to the demanding nature of your job 4 with AEP, at times it would become very time consuming; 5 is that correct? 6 A. Yes, of course. 7 Q. The -- you had some issues, and I believe you 8 referenced it with respect to your deposition in July of 9 2020, is that right, with certain allegations made 10 against AEP's involvement with House Speaker Householder 11 and HB6; is that correct? 12 A. I didn't have any depositions at that point in 13 time. 14 Q. No, let me rephrase the question. 15 There was, beginning in July of 2020, the 16 Columbus Dispatch reported that AEP may have contributed 17 money to a group called Empowering Ohio's Economy, Inc., 18 which was labeled as potential dark money with respect 19 to some of the actions between First Energy and House 20 Speaker Larry Householder; is that correct? 21 MR. CIOFFI: Objection. Beyond the scope of 22 discovery. You may answer yes or no. 23 THE WITNESS: There was an article in the 24 Columbus Dispatch about that time.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Just professional. 2 Q. How frequently would you meet personally with 3 Greg Carmichael? 4 A. I didn't. Are you asking during the time of 5 the -- of the period in question or -- because I would 6 meet with Greg when he became CEO. 7 Q. Sure. Sure. Let me rephrase the question. 8 You first met him in 2014; is that correct? 9 A. That's about right, I think. 10 Q. All right. Did you ever meet with Greg 11 Carmichael outside his duties as a president or CEO or 12 employee of Fifth Third Bank? 13 A. When he was CEO of Fifth Third Bank, I would 14 meet with him because I was chair of the governance 15 committee and I would meet with him on governance 16 committee matters, scheduling, logistics, those kinds of 17 things, but I never met with him until -- individually 18 until he became CEO. 19 Q. Okay. And how frequently would you meet with 20 him after he became CEO of Fifth Third Bank? 21 MR. CIOFFI: Again, objection. Time frame. 22 Are you talking 2015 to 2020, is that the time 23 frame you're asking him about? 24 MR. SABA: During the time he was CEO of Fifth 25 Third Bank, correct.</p>

<p>1 THE WITNESS: During the time he was CEO, 2 rarely, but when I did meet him, it was -- or have 3 a call with him, it was because of the governance 4 committee matters. So it may be once a year, maybe 5 twice a year. 6 BY MR. SABA: 7 Q. Other than those once or twice a year 8 conversations or meetings with Mr. Carmichael regarding 9 governance, were all your other meetings with 10 Mr. Carmichael at Fifth Third board meetings? 11 A. Yes. Fifth Third board meetings, and that 12 includes the dinners and other events of the Fifth Third 13 board. 14 Q. And encompassed in that one to two times a 15 year, that would include any phone calls you may have 16 with Mr. Carmichael or text messages, any other 17 communications; is that right? 18 MR. CIOFFI: Objection. Assumes facts not in 19 evidence. Lack of foundation. He's never 20 testified there were any such things. In fact, I 21 think he testified that there weren't. But do you 22 understand the question? 23 THE WITNESS: No. Can you repeat it? 24 MR. SABA: Sure. 25</p>	<p style="text-align: center;">Page 28</p> <p>1 BY MR. SABA: 2 Q. I'm just trying to clarify the nature and 3 volume of communications that you had had with 4 Mr. Carmichael. 5 A. My communications with Greg after he became 6 the CEO, I would meet with him occasionally just to see 7 how he was doing as a new CEO because somewhat of a 8 mentor relationship as lead director. So I would have 9 calls occasionally with him just to see how he is doing, 10 those types of things, and then when I took over the 11 governance committee, it was really governance committee 12 logistics and those types of things. So it was all bank 13 business. There was nothing -- I mean, nothing 14 personal. 15 Q. And in terms of volume, that would be one to 16 two times a year that you would have those 17 communications? 18 A. Yes, I think so. 19 Q. What about with respect to Robert Schaffer, 20 when did you first meet Robert Schaffer? 21 A. I met Bob during the time of -- I think it was 22 during TFT, Transforming Fifth Third, and it was really 23 around those kinds of matters that were occurring at 24 that particular time. 25 Q. Do you recall what year that was?</p>
<p>1 BY MR. SABA: 2 Q. You mentioned these one to two communications 3 a year of meeting with Greg Carmichael. I'm just 4 trying -- let me go back a second. 5 Would you communicate with him by phone? 6 A. Typically by phone, in preparation for 7 governance committee matters. 8 Q. All right. Would you communicate with him by 9 text? 10 A. No, I don't recall that. 11 Q. All right. Would you communicate with 12 Mr. Carmichael by email? 13 A. I don't recall that. 14 Q. So going back to my question again, that one 15 to two times a year that you would communicate directly 16 with Mr. Carmichael outside any Fifth Third board 17 meetings and related board meeting events, that would 18 include any emails or text messages or other 19 communications to the extent there were any; is that 20 correct? 21 MR. CIOFFI: Objection to the form of the 22 question. I believe you said outside of board 23 matters in your question, and he testified there 24 weren't any such communications. Is that what you 25 intended to say? I'm not clear about the question.</p>	<p style="text-align: center;">Page 29</p> <p>1 A. I don't recall what year. It was probably 2 2015, '16, I suppose. 3 Q. How would you describe your relationship with 4 Mr. Schaffer? 5 A. Just professional. 6 Q. How frequently would you directly communicate 7 with Mr. Schaffer? 8 A. I don't recall communicating with him. I 9 mean, other than board settings. 10 Q. Was there an occasion where would you 11 separately communicate with him by cell phone or by 12 email? 13 A. I don't recall that. 14 Q. What was your relationship with Phil McHugh 15 prior to January 1, 2020? 16 A. Prior to January 1, 2020? 17 Q. Correct. 18 A. Professional. 19 Q. What was your understanding of Phil McHugh's 20 role at Fifth Third Bank prior to January 1, 2020? 21 A. Well, he had various -- various roles, the 22 consumer bank, and then he had wealth management for a 23 period of time. So he had different roles at the 24 company. 25 Q. How frequently did you meet with Phil McHugh</p>

<p>1 prior to January 1, 2020?</p> <p>2 A. I didn't, other than board settings.</p> <p>3 Q. How frequently did you communicate with Phil</p> <p>4 McHugh prior to January 1, 2020?</p> <p>5 A. I'm sorry, that sounded like the same</p> <p>6 question, but --</p> <p>7 Q. Yeah, I'll rephrase the question.</p> <p>8 Did you ever communicate with Mr. McHugh by</p> <p>9 cell phone or email?</p> <p>10 A. No, I did not.</p> <p>11 Q. Other than the board settings, did you ever</p> <p>12 observe Phil McHugh in the workplace?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Prior to January 1, 2020, did you ever meet</p> <p>15 with or interview any of Phil McHugh's direct reports?</p> <p>16 A. No.</p> <p>17 Q. Prior to January 1, 2020, did you ever</p> <p>18 participate in any of Phil McHugh's annual or midyear</p> <p>19 reviews?</p> <p>20 A. No. Other than the talent management reviews</p> <p>21 for the board.</p> <p>22 Q. You're referring to the talent management that</p> <p>23 would take place in December of each year, talent</p> <p>24 management reviews?</p> <p>25 A. Yes.</p>	Page 32	<p>1 sheets specifically broken out for the divisions managed</p> <p>2 by Mr. McHugh?</p> <p>3 A. No. I would have to say we would see the</p> <p>4 rollup of -- I mean, there would be discussions during</p> <p>5 board meetings of how the consumer bank was doing, how</p> <p>6 wealth management was doing. So we would -- it wouldn't</p> <p>7 be the income and balance sheets, but certainly we'd get</p> <p>8 a synopsis of how those areas were doing.</p> <p>9 Q. Do you recall any specific criticisms of how</p> <p>10 those areas were doing during the time that Mr. McHugh</p> <p>11 was managing those areas?</p> <p>12 A. No.</p> <p>13 Q. In 2015, how often would the Fifth Third board</p> <p>14 meet?</p> <p>15 A. In 2015? Six, seven times a year, something</p> <p>16 like that, yeah.</p> <p>17 Q. And would those be -- when you say six to</p> <p>18 seven times a year, are those six different sessions in</p> <p>19 terms of they may meet one time, it would be for two</p> <p>20 separate days, meet for a few hours?</p> <p>21 A. It would be committee meetings, generally the</p> <p>22 first day and then start of the board meeting, and then</p> <p>23 finish up of the board meeting the next day. So</p> <p>24 primarily two-day meetings.</p> <p>25 Q. So just to be clear, when you say six to seven</p>	Page 34
<p>1 Q. But with respect to Mr. McHugh's annual</p> <p>2 reviews or midyear reviews, you would not participate in</p> <p>3 those; is that right?</p> <p>4 A. No, I didn't see those.</p> <p>5 Q. Did you ever see the materials from</p> <p>6 Mr. McHugh's annual reviews or midyear reviews?</p> <p>7 A. No.</p> <p>8 Q. Did you ever review Phil McHugh's employee</p> <p>9 engagement surveys?</p> <p>10 A. No.</p> <p>11 Q. Did you ever review Phil McHugh's customer</p> <p>12 experience surveys?</p> <p>13 A. No.</p> <p>14 Q. Did you ever review Phil McHugh's financial</p> <p>15 performance relative to goals for his divisions?</p> <p>16 A. No, not specifically. I mean, we would</p> <p>17 obviously see the rollup of how the company was doing at</p> <p>18 the board meeting settings. And then as far as the, you</p> <p>19 know, his skills and abilities and things that I presume</p> <p>20 came out of the reviews, we would see in the talent</p> <p>21 review deck synopsis of it, but that's it.</p> <p>22 Q. You never saw the specifics of how he did with</p> <p>23 respect to his divisions, correct?</p> <p>24 A. No.</p> <p>25 Q. Did you ever see income statements and balance</p>	Page 33	<p>1 times, are you saying six to seven two-day meetings a</p> <p>2 year?</p> <p>3 A. The annual meeting was a meeting, too. So</p> <p>4 whether that's six or seven, I'd have to count up.</p> <p>5 Q. And during that year, do you recall how many</p> <p>6 of those meetings did you attend in person and how many</p> <p>7 did you attend by phone?</p> <p>8 A. I don't recall specifically, but whenever</p> <p>9 there was a physical meeting, I was at the physical</p> <p>10 meetings, with the exception of occasionally the</p> <p>11 September meeting because my board meeting conflicted</p> <p>12 with that one. And then obviously during COVID, we went</p> <p>13 to virtual meetings during that period.</p> <p>14 Q. Is it fair to say that each year there would</p> <p>15 be a certain number of meetings you would attend by</p> <p>16 phone between 2015 and 2020? Let me rephrase the</p> <p>17 question.</p> <p>18 Is it a fair statement that between the dates</p> <p>19 of January 1, 2015 and October of 2020, there would be a</p> <p>20 number of meetings that you would just attend by phone;</p> <p>21 is that correct?</p> <p>22 A. There may have been. I mean, during COVID</p> <p>23 there was. I don't -- there may have been call-in</p> <p>24 meetings, but most were physical meetings.</p> <p>25 Q. Do you recall how many times the board would</p>	Page 35

<p>1 have met in 2016?</p> <p>2 A. It would be the same estimate I gave earlier,</p> <p>3 six to seven.</p> <p>4 Q. Would that be true for 2017, 2018, 2019, and</p> <p>5 2020?</p> <p>6 A. Yeah, I think that's about right.</p> <p>7 Q. As you sit here today, it's a fair statement</p> <p>8 you don't recall how many meetings that you attended by</p> <p>9 phone or how many you may have been absent for?</p> <p>10 A. Oh, I was -- the only time I was absent was</p> <p>11 the September meeting on a few occasions where it</p> <p>12 conflicted with the AEP board meeting. The other</p> <p>13 meetings I was at.</p> <p>14 Q. Either by phone or in person?</p> <p>15 A. Yes.</p> <p>16 Q. When did you first meet Tim Spence?</p> <p>17 A. I don't recall specifically, but I would say</p> <p>18 maybe 2015, 2016.</p> <p>19 Q. And how did you first meet Mr. Spence?</p> <p>20 A. He was reporting to the board on a strategy.</p> <p>21 Q. Prior to January 1, 2020, how frequently did</p> <p>22 you meet with Mr. Spence?</p> <p>23 A. I met with him -- I mean, I saw him at board</p> <p>24 meetings. I didn't meet with him outside the board</p> <p>25 meetings.</p>	<p>Page 36</p> <p>1 Mr. Spence's annual reviews?</p> <p>2 A. No.</p> <p>3 Q. Did you --</p> <p>4 A. Other than what came up through the talent</p> <p>5 review process.</p> <p>6 Q. Again, you're referring to what we've</p> <p>7 called as -- what we've referred to as the talent deck;</p> <p>8 is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did you ever review any of Tim Spence's</p> <p>11 employee engagement surveys?</p> <p>12 A. No.</p> <p>13 Q. Did you ever review any of Tim Spence's</p> <p>14 customer experience surveys?</p> <p>15 A. No.</p> <p>16 Q. Did you ever review Tim Spence's financial</p> <p>17 performance relative to the goals for his divisions?</p> <p>18 A. No.</p> <p>19 Q. Did you ever review any or see any income</p> <p>20 statements and balance sheets specifically broken out</p> <p>21 for just the divisions managed by Mr. Spence?</p> <p>22 A. No.</p> <p>23 Q. Going back to your reference to the board</p> <p>24 meeting process, and you said there were activities</p> <p>25 accompanying the board meetings, is that right, dinners;</p>	<p>Page 38</p>
<p>1 Q. Did you ever communicate with Mr. Spence</p> <p>2 outside board meetings between January 1, 2015 and</p> <p>3 October of 2020?</p> <p>4 A. No, I don't recall.</p> <p>5 Q. Other than board meetings, did you ever</p> <p>6 observe Mr. Spence in the workplace at Fifth Third prior</p> <p>7 to January 1, 2020?</p> <p>8 A. No.</p> <p>9 Q. Prior to January 1, 2020, did you ever meet</p> <p>10 with or interview any of Mr. Spence's direct reports or</p> <p>11 subordinates?</p> <p>12 A. No, nothing other than board meetings, if he</p> <p>13 brought people that reported to him to the board</p> <p>14 meetings, but I dont know if Ben Hoffman was doing that</p> <p>15 at that point in time or not, but it would be people who</p> <p>16 reported from a strategy standpoint.</p> <p>17 Q. Do you specifically recall ever speaking to</p> <p>18 any of Mr. Spence's direct reports?</p> <p>19 A. No.</p> <p>20 Q. Or subordinates at any board meetings?</p> <p>21 A. No.</p> <p>22 Q. Did you participate in or perform at any of</p> <p>23 Mr. Spence's annual or midyear reviews?</p> <p>24 A. No, I did not.</p> <p>25 Q. Did you review any documentation for</p>	<p>Page 37</p> <p>1 is that correct?</p> <p>2 A. Yes, uh-huh.</p> <p>3 Q. How would that take place or what would be --</p> <p>4 your involvement be if you were attending the board</p> <p>5 meeting by phone?</p> <p>6 A. If I was attending the board meeting by phone,</p> <p>7 it would be primarily the board meeting itself, not the</p> <p>8 dinner.</p> <p>9 Q. Would you attend any committee meetings by</p> <p>10 phone?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. During the period from January 1, 2015</p> <p>13 through October 2020, do you recall how frequently Phil</p> <p>14 McHugh attended board meetings?</p> <p>15 A. He was at most -- most of the board meetings</p> <p>16 because he had a major part of the bank business. He'd</p> <p>17 give reports like the rest of the executive leadership</p> <p>18 team.</p> <p>19 Q. Between January 1, 2015 and October 2020, do</p> <p>20 you recall how many board meetings were attended by</p> <p>21 Mr. Spence?</p> <p>22 A. He also attended the same -- same meetings as</p> <p>23 part of the executive team.</p> <p>24 Q. Do you understand what the term "enterprise</p> <p>25 committee" means?</p>	<p>Page 39</p>

<p>1 A. Yes.</p> <p>2 Q. What does that mean?</p> <p>3 A. It's the executive leadership team at the bank reporting to the CEO.</p> <p>4 Q. Mr. McHugh and Mr. Spence both would have been 5 members of the enterprise committee between 2015 -- 6 between January 1, 2015 and October 2020; is that 7 correct?</p> <p>8 A. Yes, I believe so.</p> <p>9 Q. Okay. Is it your understanding that all 10 members of the enterprise committee would attend each 11 board meeting?</p> <p>12 A. Yes, that's what I assumed, yep.</p> <p>13 Q. Do you know who determined which members of 14 the enterprise committee would attend board meetings 15 between the period of January 1, 2015 through October 16 2020?</p> <p>17 A. The CEO.</p> <p>18 Q. Mr. Carmichael?</p> <p>19 A. Greg Carmichael.</p> <p>20 Q. Is that right? Do you know who it was who 21 would determine which members of the enterprise 22 committee would make presentations at a board meeting 23 between January 1, 2015 and October 2020?</p> <p>24 A. Usually it's the CEO. I assume Greg</p>	<p>Page 40</p> <p>1 expertise on -- that focused on this kind of -- this 2 kind of activity.</p> <p>3 And it either validates what you're thinking 4 or it doesn't, and in many cases, boards have their 5 views of whether -- what candidates are suitable for 6 CEO, they make that determination, and then the 7 outside -- the outside consultant is brought in to help 8 facilitate and validate the process, and it's just part 9 of the analytics that the board uses, along with the 10 talent management activities that we talked about 11 earlier.</p> <p>12 So -- and, of course, every board member has 13 their own interpretation during this whole process of -- 14 from their own experiences of what they expect from a 15 CEO perspective. My view may be different than other 16 board members' views based on my knowledge about what it 17 takes to be a CEO, and -- and -- but the board comes 18 together with those various perspectives to determine 19 what the next steps are.</p> <p>20 Q. Did Fifth Third use an outside consultant in 21 2015 when Greg Carmichael was being assessed for 22 president and CEO?</p> <p>23 A. They did.</p> <p>24 Q. Who did they use?</p> <p>25 A. RHR. I forgot the exact name, but it was an</p>
<p>1 Carmichael did that. I don't know for sure who decides that or not, but I am sure it's cleared through the CEO.</p> <p>2 Q. What is your understanding of the executive 3 succession process at Fifth Third for president and CEO?</p> <p>4 A. The executive succession process is typically that the talent management review goes together with the succession planning and individuals would be identified for particular positions, at least potential for positions and developmental goals associated with that.</p> <p>5 Are you talking about the CEO or just 6 generally executive?</p> <p>7 Q. For president and CEO.</p> <p>8 A. Okay. For president and CEO, it's a much more detailed process that we go through, particularly as it relates to analysis that's done by outside consultants, certainly the internal analysis of the talent review, the -- certainly the focus on developmental activities.</p> <p>9 Q. You referred to outside consultants. What do 10 you mean by the use of outside consultants?</p> <p>11 A. Typically every board I've been involved with, whenever there is an executive succession planning, an outside consultant is brought in to do outside analysis, analytics associated with whether a person is capable of taking on the CEO role, and it's used as -- just like the talent management, used as a tool to get outside</p>	<p>Page 41</p> <p>1 outside consultant that had been used previously.</p> <p>2 Q. In 2015, how many potential candidates were 3 there for president and CEO at Fifth Third?</p> <p>4 A. In 2000 --</p> <p>5 Q. '15.</p> <p>6 A. '15. Let's see. In '15, I think there were -- at that point, in '15, I -- I believe that this was where the -- can you repeat your question?</p> <p>7 Q. Certainly. In 2015, how many potential 8 candidates were there for president and CEO of Fifth 9 Third Bank?</p> <p>10 A. Yeah. In '15, there's really only one that we felt like was -- had the skills and abilities to be CEO.</p> <p>11 Q. And that --</p> <p>12 A. And this is -- when I talk about this, I talk about long-term CEO for the bank, not emergency CEO.</p> <p>13 Q. And what is the distinction?</p> <p>14 A. There's a huge distinction between emergency CEO and a CEO that you want to be able to have for the long term. Emergency CEO can be anyone. It could be someone from the operational area. It could be the CFO. It could be the general counsel. That person is specifically put in place to keep the wheels on the -- on the wagon while the board decides who a long-term CEO would be.</p>

<p>1 The qualifications for a long-term CEO are 2 very different. The emergency CEO is more tactical. 3 Long-term CEO is much more strategic in terms of where 4 the direction for the bank, the vision for the bank in 5 the future, whether it fits the life of the bank at that 6 particular time or not.</p> <p>7 And in a lot of cases, someone may be suitable 8 as an emergency CEO but not suitable as a long-term CEO.</p> <p>9 Q. What do you mean by the term "fits the life of 10 the bank"?</p> <p>11 A. Well, I can tell you, I mean -- I have 12 experienced this in my own company. I've experienced it 13 in other companies that I've been on the not-for-profit 14 boards and so forth, Fifth Third in particular. When 15 Kevin Kabat was CEO, Kevin had come out of the financial 16 crisis and he would -- admittedly so, he was tired. The 17 regulatory activities of the bank were not good.</p> <p>18 We always characterize that we were in the 19 regulatory doghouse, and it was important to have a CEO 20 put in place that -- that was very focused on the 21 processes and procedures of the bank to improve our 22 regulatory outcome and ensure that we were in the 23 position where we could do M&A and other activities.</p> <p>24 Greg Carmichael fit the bill from that 25 perspective, and that's why I mean the company needed</p>	<p>Page 44</p> <p>1 see that in every company, the CEO is chosen based upon 2 where the company is at the time, what the conditions 3 are externally, and who best fits the major criteria in 4 place to ensure that the bank can move forward, or any 5 company.</p> <p>6 Q. Between January 1, 2016 and January 1 of 2020, 7 did you ever discuss with Greg Carmichael the topic of 8 Phil McHugh succeeding him as president and CEO of Fifth 9 Third?</p> <p>10 A. No.</p> <p>11 Q. Between January 1, 2016 and January 1, 2020, 12 did you ever discuss with Greg Carmichael the topic of 13 Tim Spence succeeding him as president and CEO of Fifth 14 Third?</p> <p>15 A. Of 2020?</p> <p>16 Q. January 1 of 2020, correct.</p> <p>17 A. Yes, he had that discussion with the board, 18 that Tim was very strategic and that he was well thought 19 of in terms of his further development.</p> <p>20 Q. You said "he" had that discussion with the 21 board. You're saying Greg Carmichael had the discussion 22 with the board?</p> <p>23 A. Greg gave us regular updates of progress.</p> <p>24 Q. Go ahead. Did I cut you off? I'm sorry.</p> <p>25 A. No.</p>
<p>1 someone who was very focused on the internal workings of 2 the bank, the processes to improve the vitality of the 3 bank moving forward, and you get the fundamentals in 4 place to ensure that we could continue on from a 5 strategic standpoint.</p> <p>6 So when I talk about the life of the company, 7 you had moved from Kevin to Greg. Greg was for that 8 specific purpose. The question was, you know, was he -- 9 and he turned out to be strategic as well. We didn't 10 know that at the time, but we didn't really need that as 11 much. But fast forward to when Tim Spence became CEO, 12 we were very much in the process where the fundamentals 13 were in place, the process was in place, and the 14 strategic activities of the bank were extremely 15 important. You even saw it in our board settings where 16 it was more tactical, focused on how we rehabilitate the 17 bank and then we move to more -- the strategic aspects.</p> <p>18 And then you had Fintech and everything else 19 going on at the time, and that's why I say the life of 20 the bank at that particular point was to make sure that 21 there was a strategic vision and the analytics in place, 22 the knowledge base in place, to ensure that we could 23 continue to progress in the face of competition from 24 Fintechs and others.</p> <p>25 So that's why I say the life of the bank. You</p>	<p>Page 45</p> <p>1 So just to clarify my previous question, you 2 were saying that Greg Carmichael was the one who 3 discussed with the board about Tim Spence being the next 4 president and CEO of Fifth Third; is that correct?</p> <p>5 A. No. He would say he's a potential candidate 6 as he progresses in his development. He could succeed 7 to the CEO role. Now, he did talk about Phil in the 8 context of this is a person that could step in on an 9 emergency basis, potentially.</p> <p>10 I think Tayfun or Phil could step into the 11 role and the board would have to look at it based upon 12 what condition was occurring at the time because, you 13 know, Phil -- you know, Phil was a Steady Eddie -- my 14 words -- utility player that could continue the 15 operation of the bank from a tactical sense. So he fit 16 well potentially as a, you know, as an emergency 17 temporary interim CEO while the board determined who the 18 long-term CEO should be.</p> <p>19 So the context of Greg's discussion was really 20 around long-term CEO. Because we didn't know how long 21 Greg would be there.</p> <p>22 Q. These reports that Greg Carmichael gave to the 23 board first with respect to Mr. Spence, when did those 24 occur?</p> <p>25 A. I don't recall specifically, but various times</p>

<p style="text-align: right;">Page 48</p> <p>1 during -- during executive sessions of the boards, he 2 would give his latest thinking. And that could change. 3 That could change from time to time, but he was very -- 4 very supportive of Tim and his development.</p> <p>5 Q. And with respect to Mr. Carmichael's comments 6 regarding Mr. McHugh to the board, when did those occur?</p> <p>7 A. When we talked about emergency CEO. So you 8 can have a conversation that says this is the person 9 that really fits the bill for the long-term view of the 10 bank, but if you have something that happens to me, if I 11 get run over by a bus, these are the people that you 12 could look at potentially to fill that role until you 13 can -- until you can get established who the next CEO 14 would be.</p> <p>15 So it was really a view of the trajectory of 16 development, which that's typical. In a lot of cases 17 you see executives that have a high trajectory, they 18 just need time to develop that. You see it pretty 19 clearly, and his name was put forward at given times of 20 being a long-term CEO of the bank because he knew so 21 much about strategy. He knew so much about Fintech, 22 digital banking, all those things that would be -- that 23 would have an impact on the bank from a strategic sense 24 going forward. And he had the skills, the acumen, 25 certainly in the conversations we had in the board</p>	<p style="text-align: right;">Page 50</p> <p>1 regular updates of really all his employees, all of his 2 direct reports. Occasionally it was in a lot of detail, 3 occasionally it wasn't. He would give his views of how 4 people were developing in different roles, and he was 5 very -- I mean, certainly we saw it from a Tim Spence 6 perspective, and the board wanted to know more about his 7 development as time went on.</p> <p>8 Q. You said "regular updates." How frequent was 9 the regular updates?</p> <p>10 A. I'd say they -- I mean, they weren't like at 11 every meeting, but certainly when we were considering as 12 a board -- a board has a significant responsibility to 13 make sure that if something were to happen to Greg or 14 if -- when Greg decided to retire or whatever, that we 15 were ready for were there internal candidates in the 16 company that could succeed to that CEO role. So he 17 would occasionally give us updates on his thinking, and 18 his thinking was pretty consistent.</p> <p>19 Q. Are you --</p> <p>20 A. As was the board's.</p> <p>21 Q. Are you able to identify something more 22 frequently than occasionally?</p> <p>23 A. Well, I don't know. I don't recall the 24 frequency.</p> <p>25 Q. With respect to those updates regarding</p>
<p style="text-align: right;">Page 49</p> <p>1 setting, he knew the details, was very fluent, typically 2 didn't have to use notes at all, and he was very quick 3 on his feet. So he met a lot of those -- a lot of those 4 objectives. So the board -- the board was very 5 supportive of him and his development, and Greg knew 6 that.</p> <p>7 Q. And just to be clear, because you used the 8 pronouns he, him, he, him, you're referring to Tim 9 Spence during that --</p> <p>10 A. Tim.</p> <p>11 Q. -- period?</p> <p>12 A. Yes.</p> <p>13 Q. And you indicated that this was what would be 14 reported to the board, you're saying this is what Greg 15 Carmichael would report to the board about Tim Spence; 16 is that correct?</p> <p>17 MR. CIOFFI: Objection. Mischaracterizes his 18 testimony. He testified about what the board 19 thought.</p> <p>20 BY MR. SABA:</p> <p>21 Q. Mr. Akins, I'm just trying to get 22 clarification of -- you just went through a series of 23 referring to somebody as he, him, he has. You're 24 referring to Mr. Spence during that time?</p> <p>25 A. I'm referring to Tim Spence. Greg would give</p>	<p style="text-align: right;">Page 51</p> <p>1 Mr. Spence, when did those begin by Mr. Carmichael?</p> <p>2 A. I don't -- I don't recall specifically. Yeah, 3 I just don't recall when it originally started.</p> <p>4 Q. And with respect to the regular updates 5 regarding Mr. McHugh, when did those begin?</p> <p>6 A. Well, when he gave updates of individuals, he 7 would say, you know, Phil is -- I mean, Phil was doing 8 well in his job. He performed well. And Greg, you 9 know, was confident in his abilities to move from one 10 area of the bank to another, and that's why I say he was 11 a real utility player and one that could move from one 12 area to another, had broad experience with the bank, and 13 Greg was very supportive of Phil in his roles as well, 14 and the board was, too. I'm not saying that, you 15 know -- you know, certainly Phil could do the jobs that 16 he was given and -- but that's not what we needed as a 17 CEO of the bank, moving forward.</p> <p>18 Q. Did you ever discuss with any members of the 19 board the topic of Phil McHugh succeeding Greg 20 Carmichael as the president and/or CEO of Fifth Third?</p> <p>21 A. No.</p> <p>22 Q. Why is that?</p> <p>23 A. Because Phil was viewed -- at least in my 24 view, I never asked others -- but in my view he was a 25 utility player. He very much knew, and I've had -- I've</p>

<p style="text-align: right;">Page 52</p> <p>1 had executives that worked for me, at least two that I 2 can think of -- that were -- that were in that vein. 3 They were utility players. They enjoyed what they were 4 doing. They were very good at what they did and they 5 could be very supportive to a CEO in terms of the 6 internal workings that were occurring. You know, you 7 typically -- and that's -- and the board and Greg felt 8 good about Phil in that respect.</p> <p>9 When you talk about CEO, that's a totally 10 different thing. You can -- when you're evaluating for 11 a CEO, you've got investors, you have external market 12 conditions of -- that are occurring in the industry, you 13 have contacts in the industry, all those types of things 14 that are incredibly important.</p> <p>15 And where the bank was, and, again, in the 16 life of the bank, Tim Spence had those skills and 17 abilities. What we wanted to see more of was his -- how 18 he would perform in various areas of the bank, and given 19 time and experience and Greg stayed so that could be 20 done. I mean, Greg was staying anyway, but certainly 21 Tim's development was -- was something that we looked 22 at.</p> <p>23 MR. SABA: Can we go off the record?</p> <p>24 (A recess was taken from 11:01 a.m. to 11:14 25 a.m.)</p>	<p>1 the -- within the enterprise.</p> <p>2 As a utility player, what I'm saying is, it 3 that he's more internally focused, more focused on his 4 experiences around internal to the banking environment, 5 and that's -- by someone who can -- is relatively 6 portable from one place to another in the bank, because 7 of their knowledge of the internal operations of the 8 bank. That's what I meant.</p> <p>9 Q. When did the board determine that Phil McHugh 10 did not have the skill set to be the next president and 11 CEO of Fifth Third?</p> <p>12 A. Phil McHugh was never considered to be the 13 future CEO of the bank. He was viewed to be, as I said 14 earlier, if emergency arose because of his experiential 15 level within the bank, there's a big difference between 16 keeping the wheels on versus progressing the bank into 17 the future, particularly with the environment that the 18 banking industry is in.</p> <p>19 That's -- that's the way I looked at it. I 20 mean, other board members may look at it differently, 21 but that's the way I look at it, and that's based on my 22 experience.</p> <p>23 Q. With respect to Mr. McHugh, you said he was 24 never considered to be the next president and CEO of 25 Fifth Third Bank; is that right?</p>
<p style="text-align: right;">Page 53</p> <p>1 THE VIDEOGRAPHER: We are back on the record. 2 This is media 2 of today's deposition. The time is 3 11:14.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Akins, before we went off the record, you 6 made a reference to Mr. McHugh as a "utility player"; is 7 that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And by that reference to utility 10 player, are you indicating that Mr. McHugh was not 11 suitable to succeed Greg Carmichael as president and CEO 12 of Fifth Third Bank?</p> <p>13 A. Yes.</p> <p>14 MR. CIOFFI: I --</p> <p>15 THE WITNESS: Oh.</p> <p>16 MR. CIOFFI: By way of objection, when you say 17 suitable, do you mean qualified?</p> <p>18 BY MR. SABA:</p> <p>19 Q. Do you understand my question?</p> <p>20 A. Yeah, I understand the question.</p> <p>21 Q. Okay.</p> <p>22 A. He -- he was -- he did not have the skill sets 23 for what we viewed, the board viewed, as what the CEO 24 for the future would need. He had very good operational 25 skills, very good convening authority skills within</p>	<p>1 A. Well, I mean, as long as I've been with the 2 board, he was never considered. Now, he may have been 3 considered earlier, I don't know.</p> <p>4 Q. During the time that you were with Fifth Third 5 Bank, who were the individuals that were considered to 6 be the next president and CEO of Fifth Third Bank?</p> <p>7 A. Well, keep in mind, we went -- we went from 8 Kevin to Greg and the focus was on Greg to become CEO. 9 Well, he had just become CEO. So then the board is 10 really focused on Greg's development and emergency 11 setting for CEO, not so much on long term at that point 12 in time. Then it sort of crescendos over time base upon 13 how long the sitting CEO is in place.</p> <p>14 So you really had -- and then when Tim came to 15 the company, it was, I mean, Greg certainly was very 16 positive about it and we were very positive, the board 17 was positive about what we were seeing, and if anyone in 18 the bank, internal to the bank, was someone to take a 19 look at for the future, it was Tim Spence. I mean, 20 that's how things developed. You don't have to have 21 multiple candidates for -- internal candidates for a CEO 22 role.</p> <p>23 Really, you're thinking about making sure that 24 the -- that the bank is ready if emergency condition 25 existed, and then as time develops, you're watching the</p>

<p>1 development of people -- in this case it was Tim 2 Spence -- and he was successful in that. And the bank 3 has been hugely successful afterwards. So it turned out 4 to be a great selection.</p> <p>5 Q. So is it fair to say during your time at the 6 bank, the only two people that have ever been considered 7 for CEO and president of Fifth Third Bank were Greg 8 Carmichael and Tim Spence?</p> <p>9 A. I don't recall others in a serious sense.</p> <p>10 Q. What do you mean by "a serious sense"? What 11 does that mean?</p> <p>12 A. Where the board was actually convening around 13 someone who could fill that role.</p> <p>14 Q. Well, was anybody considered in a non-serious 15 sense?</p> <p>16 A. Well, you always have -- you always have names 17 that are -- that are potential, but nothing was -- 18 nothing was, like I said, serious at that point.</p> <p>19 Q. Was Phil McHugh ever one of the names that was 20 potential?</p> <p>21 A. Well, I mean, if you looked at it from an 22 emergency CEO perspective, he was. For long-term CEO, I 23 don't remember -- I just don't remember his name being 24 involved in that discussion.</p> <p>25 Q. For long-term CEO, who were the other</p>	<p>Page 56</p> <p>1 president and/or CEO of Fifth Third Bank? 2 A. I don't think -- I don't know what other board 3 members have done, whether they had individual 4 communications or not. I have not heard of any of 5 those. I certainly did not, and I don't think any board 6 member would tell somebody, you know, you're not -- I 7 mean, you're not being considered because there's no 8 reason to do it. You don't just go walk up to any 9 employee and say, you know, you're not -- you're not 10 suitable for CEO. Especially if you weren't considered.</p> <p>11 Q. Are you aware of anyone at Fifth Third Bank 12 communicating to Phil McHugh -- Greg Carmichael or 13 otherwise -- that he would never be considered for 14 president and/or CEO of Fifth Third Bank --</p> <p>15 A. No.</p> <p>16 Q. -- on a long-term basis?</p> <p>17 A. No.</p> <p>18 Q. The determination that Phil McHugh did not 19 have the skill set to be the next president and CEO of 20 Fifth Third Bank on a long-term basis, what was that 21 based upon?</p> <p>22 A. We didn't determine that Phil did not have the 23 skill set. He just never was in the conversation for 24 long-term CEO.</p> <p>25 Q. Didn't you testify earlier that Phil McHugh</p>
<p>1 potential names?</p> <p>2 A. Well, there was discussion about Tayfun 3 naturally because he's CFO, but he really didn't have 4 the skills to become CEO. And the board sort of 5 recognized that. Greg recognized that. And typically 6 you'll look at individuals and say no, they're -- we 7 just don't see them as a future CEO and, you know, 8 that's the way it works within the board setting.</p> <p>9 Q. Was it ever communicated to Phil McHugh that 10 the board would never consider him a long-term CEO or 11 president of Fifth Third Bank?</p> <p>12 A. I don't know. The board -- to my knowledge, 13 the board never communicated to Phil McHugh that he was 14 going to be the next CEO, the board never did that. And 15 the board's responsibility is to do that, not the CEO. 16 And that's the independent board members.</p> <p>17 And as far as the independent board members 18 are concerned, we were very, you know, we had certainly 19 seen Tim, his adaptability, the work he has done, the 20 things he had done, and I think the board wanted to see 21 further development of him to see if he could be 22 potential CEO.</p> <p>23 Q. My question is, did any of the independent 24 board members ever communicate to Phil McHugh that he 25 would never be considered to be the future long-term</p>	<p>Page 57</p> <p>1 did not have the skill set that the bank would need for 2 the next --</p> <p>3 A. And that's my impression, you asked me. And I 4 imagine other board members may have their own views of 5 that as well. But it never was my view of Phil being 6 CEO, the long-term CEO. I think perfectly appropriate 7 could have been the emergency CEO, but not the long-term 8 CEO based upon where the bank was at that particular 9 time.</p> <p>10 Q. In your determination. What is your -- excuse 11 me. What is your determination based upon?</p> <p>12 A. So board members -- board members see 13 individuals at the board meeting setting. They also, 14 there is certainly views of how they position themselves 15 in board meetings. I really felt like that Phil -- this 16 is my view -- Phil was more introverted and more focused 17 on the operations of the bank and more internal for the 18 bank. And for, you know, for him, it would be a very 19 difficult proposition to ask him to do, you know, 20 strategic development when he didn't have the skill sets 21 to do it.</p> <p>22 Q. Your conclusion that Phil did not have the 23 skill sets to do strategic, what is that based upon?</p> <p>24 A. Because everything he had done was primarily 25 tactical within the organization. I used my experience</p>

1 as a CEO to think about, okay, what does the bank need
 2 to do in the future, what's important to the bank, what
 3 are the -- what are the competitive environment for the
 4 bank and particularly when you're talking about
 5 technical skill sets, when you're talking about
 6 certainly the market and what's happening in the market
 7 with Fintechs, contacts are very important in the market
 8 as well, and actually Tim's demeanor.

9 Tim struck me as someone he could go as deep
 10 as you wanted to in terms of a discussion without any
 11 notes or anything, but also he could carry on, you know,
 12 you know, a conversation on just about any topic that's
 13 specific to areas of the bank. So Tim was the person
 14 that I felt like would be prepared to be running the
 15 bank.

16 Q. Other than seeing Phil McHugh at the board
 17 meetings and the regular updates, what other information
 18 was available to you to determine that Phil McHugh did
 19 not have the skill set to become the next president and
 20 CEO of Fifth Third Bank on a long-term basis?

21 A. Well, okay, I can tell you my thinking, okay?
 22 As a CEO, a CEO is responsible for putting the right
 23 people in the right positions to get the maximum output
 24 from the team. And you can tell from a CEO where they
 25 place people, where they move people around, what

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 2 they're -- what they're thinking in terms of who best
 3 fits any particular picture.

4 So if there was an operational issue, if there
 5 was something associated with -- and I believe Phil was
 6 involved with TFT, a good thing for him to do. Because
 7 it was right down -- right down his alley.

8 But when you get to dealing with investors,
 9 dealing with changes in the marketplace, having a
 10 conversation, more of a conversation that's almost
 11 casual as opposed to a conversation that's canned,
 12 that's really important for a CEO.

13 And so that -- I just observed him, certainly
 14 the talent reviews that we saw were consistent with
 15 that, and -- and the rest of the board members I assume
 16 felt that way as well, because the focus very much was
 17 on Tim and his development.

18 It was also focused on other people's
 19 development, I'm not downplaying that at all, because
 20 when you see -- when you see the development activities
 21 of Tim, it was more focused on, okay, getting
 22 operational experience. And if you were to look at
 23 Phil's, you know, Phil's was really different parts of
 24 the bank, moving to different parts of the bank, because
 25 he was readily able to move over to those roles and be,
 in my mind -- this is my mind only -- but he could have

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1 been a very effective chief operating officer of the
 2 bank, because he knew so much about the internal
 3 workings.

4 I had a chief operating officer when I was
 5 CEO. I had people who were enterprise-wide that could
 6 get around very well to support me. Matter of fact, the
 7 chief operating officer of my previous company, he was
 8 one of the -- one of those and actually, in a lot of
 9 views, was a front runner to be CEO, but he didn't get
 10 it. I did. But he stayed with the company, because it
 11 was important to him to see the company do well, and he
 12 did fantastic. He's now on the external boards, and so
 13 I'm just saying that not everybody can be CEO.

14 There's only one position, and there's
 15 executive and senior VPs that are very good at doing
 16 their roles, very good at moving from one role to
 17 another. That doesn't mean they can be CEO, and you
 18 just sort of have to get over it. And I think it's --
 19 there's people that don't get the CEO role and -- but
 20 they stay with the company.

21 Q. You indicated that you observed him, meaning
 22 Phil, at the board meetings, correct?

23 A. Yes.

24 Q. Okay. You're not referring to any
 25 observations outside any board settings, correct?

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1 A. Of Phil?

2 Q. Correct.

3 A. No.

4 Q. And then you also, you referred to the talent
 5 reviews or talent decks; is that correct?

6 A. Yes.

7 Q. And I believe earlier you referenced the
 8 regular updates were Greg Carmichael, correct?

9 A. There were updates from Greg Carmichael.

10 Q. Okay.

11 A. I walked back the regular, because you had
 12 questions of, you know, was that frequently and that.
 13 It was not that -- it was occasionally and about
 14 different people.

15 Q. Fair enough.

16 A. Okay.

17 Q. There were updates from Greg Carmichael?

18 A. Yeah.

19 Q. You don't recall specifically how frequently
 20 they were?

21 A. Right.

22 Q. Okay. Other than those three things, your
 23 observations of Phil at the board meetings, board
 24 settings, the talent decks, and the updates from Greg
 25 Carmichael, anything else that you had regarding Phil

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1 McHugh, received regarding Phil McHugh, that helped you
 2 to determine that he did not have the skill set to be
 3 the next president and CEO of Fifth Third Bank?

4 **A. I'd say those were the primary -- the primary**
 5 **inputs to my decision process, along with you'd have to**
 6 **add my experience as a CEO and observing other**
 7 **individuals in the same genre, and that's what each and**
 8 **every board member does. I mean, the independent board**
 9 **members decide who the next CEO is based upon the inputs**
 10 **that are provided to them, and the management team and**
 11 **the CEO is there as the conduit to the board. That's**
 12 **the responsibility of the CEO, to make sure that the**
 13 **board knows and understands the talent levels of the**
 14 **executive management team and all that kind of stuff.**

15 **And I think it is really important for the**
 16 **board members to get that input. But the board is also**
 17 **pulling on their own experience based upon their own --**
 18 **that's why you have the diversity of board members and**
 19 **experiences so that they can come to the table and say**
 20 **oh, maybe this person is not right for it or this person**
 21 **is.**

22 **But in this case, in this case, there is no**
 23 **doubt the board members were very, very focused on the**
 24 **development of Tim because if there was an internal**
 25 **candidate for CEO in the future, he was it.**

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1 Q. Was there a particular date or time period
 2 that occurred when the board determined that Phil McHugh
 3 would never have the skill set to be the next president
 4 and CEO of Fifth Third Bank?

5 MR. CIOFFI: Objection. Asked and answered.
 6 You can answer it again.

7 THE WITNESS: We had a candidate that we felt
 8 like was far above -- and the internal candidate,
 9 because there's really not a comparison that was --
 10 that was done. This was really focused on who fits
 11 the skills and abilities for the bank going
 12 forward, and Tim Spence fit the bill. So there's
 13 no need for us to go back and say, okay, what about
 14 Phil McHugh or what about Tayfun or what about this
 15 person or that person?

16 When you have a person who -- who is readily
 17 able to assume that role in the future and really
 18 the entire board recognizes that, the verdict is
 19 still out. I'd have to say, you know, you
 20 initially see that and then you form a
 21 developmental plan, talk to the CEO about it, that
 22 continues over time, and if that were to falter,
 23 then we'd be back at ground zero, probably an
 24 external candidate, but nevertheless, that's --
 25 that's what's done in general board settings.

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1 BY MR. SABA:

2 Q. At what point in time did the board determine
 3 that Tim Spence was far and above any other internal
 4 candidate for president and CEO of Fifth Third Bank?

5 **A. I don't know the exact time -- time or**
 6 **anything like that. I think -- I think it was seeing**
 7 **him in action with the M&A transactions, the other**
 8 **transactions that were done, but also his discussion**
 9 **from a strategic sense from a banking standpoint, I**
 10 **think that evolved over time. We were very positive**
 11 **about him and -- with our impressions of him, but the**
 12 **board wanted Greg to know that we were -- we were very**
 13 **supportive of his further development and -- and we**
 14 **eventually were getting reports on his development even**
 15 **after he became president of the bank, because we wanted**
 16 **to make absolutely sure that he was -- he was ready to**
 17 **be CEO. That's why -- that's how transitions work.**

18 **I became president. I became CEO. Then I**
 19 **became chairman of the board. Same for Tim. And Greg**
 20 **stayed around during that transition period so that he**
 21 **would have the value of his mentorship. And I also**
 22 **mentored Greg and him during the process as well.**

23 Q. Do you recall a particular year when the board
 24 determined that Tim Spence was far and above any other
 25 internal candidate?

Page 67

1 **A. I don't recall the particular year because all**
 2 **those 2015, '16, '17 sort of -- '18 sort of comes -- it**
 3 **sort of comes together. There was -- I mean, you have**
 4 **initial discussions and then things gradually --**
 5 **gradually grow, and that's why I said earlier, Greg**
 6 **would occasionally give updates on developmental**
 7 **activities.**

8 **The interesting thing, I think, is no board**
 9 **member ever said, well, you know, maybe we should look**
 10 **at Phil McHugh. I never heard that. And I never**
 11 **heard -- as a matter of fact, I only heard support for**
 12 **Tim and Tim's continued development. That's -- except**
 13 **in the case of emergency CEO.**

14 Q. The updates that Greg Carmichael would provide
 15 to the board, were those documented anywhere in writing?

16 **A. No.**

17 Q. Were those always during an executive session
 18 of the board?

19 **A. Typically during executive session. Because**
 20 **the rest of the management team would leave at that**
 21 **particular time, and that's when the CEO can have**
 22 **conversations with the independent board members.**

23 Q. With respect to the updates that Greg
 24 Carmichael would provide regarding Tim Spence, did he
 25 ever provide any criticisms or negatives regarding Tim

<p>1 Spence?</p> <p>2 A. I don't think there was negatives or 3 criticisms. There was always discussions of, you know, 4 development activities. And really every one of the 5 talent management reviews, none of that is meant to be 6 critical or anything, it's meant to be development. 7 Everybody has developmental activities.</p> <p>8 I had development activities for my board as a 9 ten-year CEO. I would have, you know, 26 pages of 10 review and development activities. So everybody has 11 those. And he would comment that, you know, he wanted 12 to get exposed to this area or that area, and we were 13 fine with that.</p> <p>14 Q. Do you recall any of the specific development 15 activities that Greg Carmichael referred to for Tim 16 Spence?</p> <p>17 A. I think it was the ones that were primarily in 18 the -- you know, in the general updates we received in 19 talent management. For example, I mean, he was very 20 quick on his feet, very knowledgeable. Sometimes he 21 would move, you know, too fast for people. And as a 22 CEO, you have to sort of learn how to communicate in a 23 very deliberate fashion and one that recognizes that 24 your audience is keeping up with you and, you know, 25 there is generally things like that. Nothing -- nothing</p>	<p>Page 68</p> <p>1 was saying, hey, you know, I have done a lot of great 2 things here and -- and at some point I need to be 3 looking at moving on, and I'm willing to work with the 4 board on the transition of that. He committed to stay 5 as long as it needed -- as long as we needed. So really 6 it is up to a CEO to initiate that process in earnest, 7 and that's what Greg was doing. He never -- he never 8 indicated that there was some personal issue that he had 9 to -- he had to step down or anything like that, I never 10 heard any of that.</p> <p>11 Q. You've been making the reference to a 12 long-term CEO. What's the time period required to 13 constitute a long-term CEO?</p> <p>14 A. I think -- I mean, typically the average CEO 15 today is about 3 1/2 years, and my industry it's about 16 seven. In banking, it tends to be about that, but 17 you're probably looking for, you know, three to five 18 years at least for a new CEO because if you -- if you -- 19 if you have something less than that, you're completing 20 a process and then walking right back into the same 21 process, and the bank never has a chance to -- and its 22 employees and stakeholders don't have a chance to get 23 their footing with a new CEO. So it has to be at least 24 three to five years.</p> <p>25 Q. Prior to December of 2019, had the board</p>
<p>1 that he had in terms of development was a fatal flaw at 2 all. They were all constructive in terms of development 3 and actually the same for Phil.</p> <p>4 I mean, each one of the -- each one of the -- 5 the executive team would not be in their positions if 6 they were, you know, not good at what they did and -- 7 but every one of them had developmental activities and 8 that's what -- that's the kind of thing Greg would 9 occasionally report on.</p> <p>10 Q. Were you ever aware that in August of 2019 11 there was a chance that Greg Carmichael would have to 12 step down earlier than desired because of situations 13 going on with him that were personal in nature?</p> <p>14 A. No.</p> <p>15 Q. That was never communicated to you?</p> <p>16 A. No. Greg always reiterated to us he would 17 stay with the bank as long as it took for us to be 18 comfortable with who the new leader would be. He -- as 19 with any conversation that occurs with a CEO, the board 20 has to have conversations about, you know, what's your 21 time frame, what are you thinking in terms of -- in 22 terms of retirement? Not set in stone, but certainly 23 comments like that.</p> <p>24 And during that period, I guess it was, you 25 know, 2018 or so -- I can't remember exactly -- but he</p>	<p>Page 69</p> <p>1 already determined that Tim Spence was the only 2 candidate to be the next president and CEO of Fifth 3 Third Bank?</p> <p>4 A. Are you meaning internally?</p> <p>5 Q. Or anyone.</p> <p>6 A. Well, I don't know that the board had made -- 7 we felt like -- we felt like that he was the person that 8 we wanted to focus on in terms of development to give 9 him the opportunity to develop where he could be 10 considered to be CEO. He was the lead -- he was very 11 much the lead internal candidate.</p> <p>12 (Plaintiff's Exhibit 2 is marked for 13 identification.)</p> <p>14 THE WITNESS: Thank you. Do you want that one 15 back?</p> <p>16 MR. SABA: You can just put it right there.</p> <p>17 MR. CIOFFI: Put it right there.</p> <p>18 (Plaintiff Exhibit 3 is marked for 19 identification.)</p> <p>20 BY MR. SABA:</p> <p>21 Q. Mr. Akins, I've handed you two documents which 22 are marked as Exhibits 2 and 3, respectively.</p> <p>23 A. Yes.</p> <p>24 Q. And first referring to Exhibit 2, just for 25 point of reference, you'll see at the bottom of the</p>

	Page 72		Page 74
1	first page there's a stamp that says Fifth	1	MR. CIOFFI: I'm going to instruct the witness
2	Third-McHugh-Minutes 000253; do you see that?	2	to read the whole paragraph before you answer any
3	A. Yes.	3	additional questions.
4	Q. And if you look at the last page, it should	4	THE WITNESS: There's external candidates,
5	say Fifth Third-McHugh-Minutes 000265; is that correct?	5	okay. Yeah, I thought he was talking about the
6	A. That's correct.	6	long-term CEO because -- I mean, it sort of tells
7	Q. All right. And with respect to Exhibit 3, the	7	you something when you read this to say including
8	first page is Bates stamped at the bottom Fifth	8	Mr. Spence, and then a discussion of external
9	Third-McHugh-Minutes 000266; do you see that?	9	candidates.
10	A. Yes.	10	So there -- I don't know if there was other
11	Q. And the last page is Bates stamped Fifth	11	names or not, I don't recall that. And then it
12	Third-McHugh-Minutes 000283; is that correct?	12	falls into the emergency succession discussions. I
13	A. Yes.	13	think it's exactly what I've been saying.
14	Q. Going back to Exhibit Number 2, can you	14	BY MR. SABA:
15	identify Exhibit Number 2 for me, please?	15	Q. So going back to the third sentence, I believe
16	A. It's the minutes of the board of directors of	16	it is, which indicates, "In response to director
17	Fifth Third dated December 17, 2019.	17	questions, Mr. Carmichael and Mr. Schaffer commented
18	Q. Have you seen this document before?	18	upon the potential external candidates that could be
19	A. Yes.	19	considered for such a role --
20	Q. And can you identify Exhibit 3 for me, please?	20	A. Uh-huh.
21	A. Minutes of the board of directors Fifth Third	21	Q. -- including a discussion of the known
22	Bank December 17, 2019.	22	capabilities of such candidates and the potential
23	Q. And have you seen Exhibit 3 before?	23	challenges created by appointment of an external
24	A. I believe so, yes.	24	candidate for the role."
25	Q. When would you typically see the minutes from	25	Do you see that?
	Page 73		Page 75
1	a meeting?	1	A. Yes.
2	A. Typically they'll show up at the succeeding	2	Q. Do you recall who the potential external
3	meeting afterwards, and then we review the minutes and	3	candidates were?
4	approve them at that board meeting.	4	A. I don't recall the names, but I'm pretty sure
5	Q. All right. Referring you to Exhibit 2 and to	5	it was other bank CEOs that could potentially be
6	the second page, Fifth Third-McHugh-Minutes 000254,	6	interested in a Fifth Third Bank role.
7	two-thirds of the way down the page, the paragraph	7	Q. Do you recall any of the discussion of the
8	begins after the resolutions, "Thereafter,	8	known capabilities of such candidates?
9	Mr. Carmichael and Mr. Schaffer initiated a review of	9	A. I don't recall.
10	potential succession timelines and candidates for the	10	Q. Do you recall the discussion of the potential
11	chief executive officer position. They reviewed top	11	challenges created by appointment of an external
12	succession candidates, including Mr. Spence, and	12	candidate for the role?
13	discussed the potential time lines for their readiness	13	A. Yes.
14	and key development priorities for each such candidate."	14	Q. And what was that discussion?
15	Do you see that?	15	A. Well, any time you bring an external candidate
16	A. Yes.	16	in, it's -- you don't know exactly what you're getting.
17	Q. Do you recall who the candidates were that	17	You interview in the process and that kind of thing, but
18	Mr. Schaffer and Mr. Carmichael discussed at that	18	you don't know exactly what you're getting. You do know
19	December 17, 2019 meeting?	19	their qualifications on paper and that kind of thing.
20	A. I don't. I don't recall. Typically it would	20	This is really more the initiating of a soft question or
21	have been the CFO, I suppose, Tayfun; I just don't	21	a soft search to say, do you know, Greg, of any other
22	recall.	22	people in the industry who could fit the bill relative
23	Q. Do you recall them discussing more than one	23	to being CEO of the company?
24	candidate?	24	So it would be an active CEO that falls into
25	A. I don't. I don't recall.	25	the role, but they may or may not know about Fifth Third

<p style="text-align: right;">Page 76</p> <p>1 Bank. So a lot of those issues are -- they are always 2 brought up in a succession planning process. Sometimes 3 it is a soft search, sometimes it is a hard search. In 4 this case it was asking Greg, it wasn't even a soft 5 search at this point.</p> <p>6 Q. Referring back to the first page of 7 Exhibit Number 2, it indicates the directors present and 8 it indicates you were present in person at that meeting; 9 is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Phil McHugh was not present at that 12 meeting; is that right?</p> <p>13 A. I don't recall. Yeah, it doesn't look like he 14 was. His name's not on there.</p> <p>15 Q. The minutes indicated that the meeting started 16 at 10:00 a.m. How long did the meeting last?</p> <p>17 A. I don't know if it said at the end or not, but 18 typically they wind up around noon, 12:30, something 19 like that. Does it say anywhere at the end? Here is 20 resolutions. Yeah, typically it is around 12:00 or 21 12:30.</p> <p>22 Q. And for clarification, referring to Exhibit 3, 23 these are the minutes for Fifth Third Bank as compared 24 to Exhibit 2, which are the minutes for Fifth Third 25 Bancorp; is that correct?</p>	<p style="text-align: right;">Page 78</p> <p>1 executive talent management and succession plan update 2 document.</p> <p>3 Q. Is this the talent deck that you were 4 referring to before that would be used at the December 5 board meetings?</p> <p>6 A. Typically, yes.</p> <p>7 Q. Do you recognize this as being the particular 8 talent deck for the December 2019 board meeting?</p> <p>9 A. Yeah, uh-huh.</p> <p>10 Q. How would this document be used at the 11 meeting?</p> <p>12 A. Well, typically it was a dinner or later on it 13 was in the meeting itself, but in the executive session 14 we would go through each individual and look at the 15 succession planning for various important positions and 16 then, of course, that would move to, you know, the 17 development activities, discussion of that. Greg and 18 whoever the chief human resource officer at the time 19 would be would go through the deck in terms of each 20 individual person, what their developmental needs were, 21 what their potential next positions could be, those 22 were -- it was a typical update that was done.</p> <p>23 Q. The talent deck would be prepared -- just so 24 we're on the same page -- I'm referring to Exhibit 4 as 25 the talent deck?</p>
<p style="text-align: right;">Page 77</p> <p>1 A. That's correct.</p> <p>2 Q. What's your understanding of the relationship 3 between Fifth Third Bank and Fifth Third Bancorp?</p> <p>4 A. Well, Fifth Third Bancorp is the overall 5 holding company. Fifth Third National is the bank 6 itself.</p> <p>7 Q. And also for clarification, these meetings are 8 held simultaneously; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Notwithstanding the two separate sets of 11 minutes, it's all taking place at the same time?</p> <p>12 A. That's correct. There are some specific 13 actions that may be dealt with one versus the other. 14 I've actually forgotten what they were, but bank 15 regulations require -- seemed like there was one area 16 that is dealt with by the national bank, so we purposely 17 do that, but it doesn't happen all the time.</p> <p>18 (Plaintiff's Exhibit 4 is marked for 19 identification.)</p> <p>20 BY MR. SABA:</p> <p>21 Q. Mr. Akins, I have handed you what has been 22 marked as Exhibit Number 4, which is Bates stamped Fifth 23 Third-McHugh-001105 through Fifth Third-McHugh-001154. 24 Are you able to identify this document for me?</p> <p>25 A. Well, it appears to be the human capital and</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Yes.</p> <p>2 Q. Is that a fair description?</p> <p>3 A. Yes.</p> <p>4 Q. This talent deck that we see marked as 5 Exhibit 4, that would be prepared in advance of the 6 board meeting; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you know who prepared the talent deck?</p> <p>9 A. Management.</p> <p>10 Q. Who do you mean by management? Who had 11 prepared that?</p> <p>12 A. Well, I don't know who exactly prepares it, 13 but the presenters are usually the CEO and the head of 14 human resources.</p> <p>15 Q. Who was the head of human resources as of 16 December 2019?</p> <p>17 A. I have to look at the -- it should have an 18 organization chart in here somewhere.</p> <p>19 Q. Would it have been --</p> <p>20 A. It changed -- it changed during that time 21 after the --</p> <p>22 Q. Would it have been Bob Schaffer?</p> <p>23 A. Maybe at that time. Because it was sort of an 24 interim thing after -- there was a -- I forgot her name, 25 she was there and she left. And then he had it</p>

<p style="text-align: right;">Page 80</p> <p>1 and then -- so I guess, yes, it was Bob. Yeah, he's 2 shown as chief human resources officer. 3 Q. Okay. 4 A. Yeah, he had all this for a while, so -- 5 Q. All right. So just to be clear, your 6 understanding would that this would have been prepared 7 by Mr. Carmichael and Mr. Schaffer, correct? 8 A. That it would have been sponsored by them. I 9 don't know who prepared them. 10 Q. Okay. As a board member, did you have any 11 involvement in the preparation of the talent deck marked 12 as Exhibit 4? 13 A. No. 14 Q. Would you have seen any drafts of the talent 15 deck marked as Exhibit 4? 16 A. No. 17 Q. Would the board make any changes to the talent 18 deck during the board meeting? 19 A. There was discussions of each person. I can't 20 recall any specific change that was made by the board. 21 I don't recall that. 22 Q. Referring specifically to Fifth Third-McHugh 23 001135, it's -- I'm sorry, let me be clear. 24 On Exhibit 4, I'm just trying to give you a 25 page reference --</p>	<p style="text-align: right;">Page 82</p> <p>1 Q. Do you know where that information came from? 2 A. My previous answer holds on that, but it would 3 have eventually been sponsored by the CEO and chief 4 human resource officer. 5 Q. Did the board make any changes to that 6 information? 7 A. No, not that I'm aware of. 8 Q. If you could turn to Fifth Third-McHugh 9 001132. 10 A. Okay. 11 Q. Can you identify that page for me, please? 12 A. That's the individual sheet for Phil McHugh. 13 Q. Potential for Phil McHugh it lists moderate 14 potential; do you see that? 15 A. Yes. 16 Q. And who would have put that information in 17 there for Mr. McHugh as being moderate potential? 18 A. I don't -- I don't know initially, but it 19 would have been sponsored by the CEO and the CHRO. 20 Q. And with respect to potential next positions, 21 it says, "Expand current responsibilities to include 22 middle market leadership." 23 Do you see that? 24 A. Yes. 25 Q. And who would have put that information in</p>
<p style="text-align: right;">Page 81</p> <p>1 A. Oh, okay. 2 Q. -- so you can get there. 3 A. 1135, got it. 4 Q. So Exhibit 4, Fifth Third-McHugh 001135; do 5 you see that there? 6 A. Yes. 7 Q. Can you identify that page for me? 8 A. That's the individual page for Tim Spence. 9 Q. And again, as we determined, this information 10 was filled out for the board prior to the meeting; is 11 that correct? 12 A. Yes, that's correct. 13 Q. Under the talent information and potential 14 category, it has high potential for Mr. Spence; is that 15 correct? 16 A. Yes. 17 Q. Who would have put that information in? 18 A. I don't know who would have initially put 19 those in, but I presume -- I mean, certainly it would 20 have to go through the chief human resource officer and 21 the CEO, particularly the CEO. 22 Q. Below that, under potential next positions, it 23 has president one to two years, CEO three-plus years; do 24 you see that? 25 A. Yes.</p>	<p style="text-align: right;">Page 83</p> <p>1 there? 2 A. It would have been sponsored by the CEO and 3 the CHRO. I don't know who specifically, but that's -- 4 it would have to go through them. 5 Q. If you could turn to Fifth Third-McHugh 6 001141? 7 A. 1141. 1141? 8 Q. Correct. 9 A. Yeah. That's the CEO succession plan. 10 Q. Correct. That's the title page for the CEO 11 succession plan; is that right? 12 A. Yes. 13 Q. This also would have also been reviewed during 14 the close of the December 2019 board meeting, correct? 15 A. Yes. 16 Q. Turning to the next page, Fifth Third-McHugh 17 001142, can you identify that for me, please? 18 A. That's -- that's the -- we're on the same 19 page, right? 20 Q. Correct. 21 A. That's the CEO succession view, just shows 22 different blocks, different readiness, that kind of 23 thing. 24 Q. And it's an indication of who would 25 potentially succeed to CEO; is that correct?</p>

<p style="text-align: right;">Page 84</p> <p>1 A. It's an indication of who had the opportunity 2 to eventually become CEO, yes.</p> <p>3 Q. Who would have completed this CEO succession 4 chart that we see on Fifth Third-McHugh 001142?</p> <p>5 A. I don't know who specifically, but, again, it 6 would be sponsored by the CEO and CHRO.</p> <p>7 Q. And this particular plan indicates that nobody 8 is ready now with respect to CEO succession; is that 9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And then it indicates three-plus years of Tim 12 Spence; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Seven-plus years of Brian Lamb; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. And then for emergency successor, it has 17 Tayfun Tuzun, Phil McHugh, and a board member; is that 18 right?</p> <p>19 A. That's correct.</p> <p>20 Q. Did the board make any changes to the CEO 21 succession plan we see on Fifth Third-McHugh 001142?</p> <p>22 A. No, not that I'm aware of.</p> <p>23 Q. Did the board have any criticisms of the CEO 24 succession plan we see on Fifth Third-McHugh 001142?</p> <p>25 A. Not that I'm aware of. And I would keep in</p>	<p style="text-align: right;">Page 86</p> <p>1 thing, what we've seen -- what we've seen, but that's 2 another step. Because when it comes to CEO succession, 3 it, again, is the lead -- it's the lead director's 4 responsibility to do the CEO succession. So this is 5 really done -- there's just several filters you go 6 through to get there. So -- and there could be a lot of 7 drafts. In my experience, you typically get that, 8 and -- and then you go through it and you come up with 9 the best -- the best case you have and present to the 10 board.</p> <p>11 Q. Are you aware of any other drafts of this CEO 12 succession plan that appeared either before this 13 document 001142 or after 001142?</p> <p>14 A. I did not see any of the previous drafts.</p> <p>15 Q. What about after this particular draft?</p> <p>16 A. After?</p> <p>17 Q. Correct. Did you see any revisions --</p> <p>18 A. No, I did not.</p> <p>19 Q. Okay. Are you aware of any revisions being 20 made to the CEO succession plan we see marked as 001142?</p> <p>21 A. I'm not aware of any revisions to this 22 document.</p> <p>23 Q. With respect to Phil McHugh being identified 24 as an emergency successor --</p> <p>25 A. I'm sorry, what page was that?</p>
<p style="text-align: right;">Page 85</p> <p>1 mind these are living, breathing documents. I've been 2 through this a lot as CEO, but these can change at any 3 given time. So what you're seeing is basically a 4 snapshot.</p> <p>5 Q. With respect to this particular talent deck, 6 did you see another revision of this talent deck?</p> <p>7 A. No, I did not.</p> <p>8 Q. When you say "these can change at any time," 9 are you referring specifically to the CEO succession 10 plan or for all the information we see in the talent 11 deck?</p> <p>12 A. Well, generally -- this is generally how the 13 process works, that I'm accustomed to. There are people 14 that come together in the organization, whether it's the 15 executive team or whatever, they come together with 16 their views of individual -- individual people, and they 17 have disagreements about those views.</p> <p>18 And so it's sort of how the sausage is made 19 for this type of activity before it gets to the CEO, and 20 the CEO, as part of that process, evaluates it, can make 21 changes to it, that kind of thing. Then it goes to the 22 board level.</p> <p>23 Typically, the board has been -- enough 24 discussion where there's not a lot of, you know, 25 comments, we'll comment about people and that kind of</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. I'm still on 001142.</p> <p>2 A. I was paging ahead with you. Sorry about 3 that.</p> <p>4 Q. No, you're all right.</p> <p>5 Going back to Fifth Third-McHugh 001142.</p> <p>6 A. Okay. Got it.</p> <p>7 Q. Were -- were there any criticisms of Phil 8 McHugh being listed as an emergency successor on the CEO 9 succession plan we see identified on 01142?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Do you recall any criticisms of him being an 12 emergency successor during that December 2019 meeting?</p> <p>13 A. These are positioned as potential candidates 14 to look at if there was emergency successions. There 15 was no negative comments about that. This is -- the 16 only distinction I'm trying to make here is that we 17 weren't choosing an emergency person at that time.</p> <p>18 Q. Prior to December 2019, are you aware of any 19 other written CEO succession plans like we see in Fifth 20 Third-McHugh 001142?</p> <p>21 A. No. Before this?</p> <p>22 Q. Correct.</p> <p>23 A. There could have been previous board reviews 24 in previous years. I just don't recall them. I mean, 25 we had decks for each time we went through these</p>

<p>1 annually, but I just don't recall.</p> <p>2 Q. As you sit here today, do you recall if any of 3 the prior talent decks for 2016, 2017, 2018, if they had 4 any CEO succession plan set forth in them?</p> <p>5 A. I don't recall.</p> <p>6 Q. Other than what we've identified as the talent 7 deck, marked as Exhibit 4, was the board provided with 8 any other documentation with respect to CEO succession?</p> <p>9 A. None other than the consultant analysis, that 10 I recall.</p> <p>11 Q. The "consultant analysis." You're referring 12 to the assessment done by RHR; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Is it -- excuse me. What is your 15 understanding of when RHR did their assessment?</p> <p>16 A. That was an initial -- I don't recall exactly 17 what the time frame was. Let's see, I'm backing up from 18 when -- let's see, Tim took -- I guess it was like 2019, 19 2020.</p> <p>20 Q. You don't recall specifically as you sit here 21 today?</p> <p>22 A. No, I don't.</p> <p>23 Q. What involvement did you have in the RHR 24 assessment?</p> <p>25 A. I didn't have an involvement other than their</p>	<p>Page 88</p> <p>1 A. Yes. Yes.</p> <p>2 Q. And this was back in 2015?</p> <p>3 A. Right.</p> <p>4 Q. Did RHR assess anyone else back in 2015?</p> <p>5 A. Not that I recall. I just don't recall.</p> <p>6 Q. Who dealt directly with RHR in terms of the 7 parameters of what they would do and the assessment they 8 would perform in 2015?</p> <p>9 A. Management.</p> <p>10 Q. What would -- what was your role in 2015 with 11 respect to RHR?</p> <p>12 A. I didn't have a role with RHR. I was just a 13 board member. But listen to their report.</p> <p>14 Q. What do you recall specifically about RHR's 15 assessment in 2020?</p> <p>16 A. I remember that it pretty much confirmed our 17 views of Tim Spence. There was some discussion I 18 remember with the board and that's why I think there was 19 an initial discussion with RHR that -- and then they 20 went off and did their thing and then they came back and 21 they presented on Tim Spence, and it was consistent with 22 what the board's views were.</p> <p>23 Q. When you said "there was an initial discussion 24 with RHR," who had an initial discussion with RHR?</p> <p>25 A. I think we were introduced. I'm fuzzy on</p>
<p>1 presenting to the board in executive session.</p> <p>2 Q. When did they present to the board in 3 executive session?</p> <p>4 A. I don't recall. Either '19 or '20, I believe.</p> <p>5 Q. Were you present for that presentation?</p> <p>6 A. Yes.</p> <p>7 Q. You were present for the presentation?</p> <p>8 A. I was there -- well, I was not there the first 9 time. I was there the second time. Because it was done 10 in a September board meeting that, again, that was when 11 I had my own board meeting, so I was not there, but I 12 was made aware of the presentation. I can't recall 13 exactly how I was made aware of it. It was afterwards.</p> <p>14 Q. In what way were you made aware of the 15 presentation?</p> <p>16 A. I can't recall. Either Marsha may have given 17 me a call to update me. The presentation -- I remember 18 a presentation by RHR, but I can't remember specifically 19 which one.</p> <p>20 Q. How many presentations were there by RHR?</p> <p>21 A. Well, I was involved with the first one so 22 that sort of runs together.</p> <p>23 Q. Just to be clear, by "the first one," you're 24 year referring to when RHR did an assessment of 25 Mr. Carmichael?</p>	<p>Page 89</p> <p>1 this, but I think we were introduced to them, and then 2 they were told to go off and do their thing and they 3 did. There was some discussion by the board at that 4 particular time, you know, are we comfortable with just 5 going with one person in terms of analysis, and I was 6 completely comfortable with it and the board was as 7 well.</p> <p>8 Q. When was that discussion?</p> <p>9 A. I don't recall specifically. It seems like it 10 was a dinner, that executive -- executive session that 11 we had. I just don't recall.</p> <p>12 Q. Do you know what year that was?</p> <p>13 A. It was the year they were doing the analysis. 14 So it would be in that '19 to '20 time frame.</p> <p>15 Q. Who was present for that?</p> <p>16 MR. CIOFFI: Objection. What do you mean by 17 "that"?</p> <p>18 MR. SABA: Who was -- who -- I'll rephrase the 19 question.</p> <p>20 BY MR. SABA:</p> <p>21 Q. Who was present for the executive session 22 where you discussed how many people RHR should assess?</p> <p>23 A. The board was there.</p> <p>24 Q. Including Greg Carmichael?</p> <p>25 A. Including Greg.</p>

<p>1 Q. Okay.</p> <p>2 A. That's my recollection. Now, it may be faulty, but that's my recollection.</p> <p>3 Q. And you're not able to pin it down, a month or 4 year when that occurred?</p> <p>5 A. No. It all sort of runs together during that period of time.</p> <p>6 Q. Would there be any documentation in writing of 7 that session?</p> <p>8 MR. CIOFFI: Objection to the form of the 9 question. Lack of foundation. That he knows of?</p> <p>10 MR. SABA: The deposition is his personal 11 knowledge, so yeah.</p> <p>12 MR. CIOFFI: Well --</p> <p>13 THE WITNESS: I just don't recall. I just 14 don't recall.</p> <p>15 BY MR. SABA:</p> <p>16 Q. Did you read Marsha Williams' deposition in 17 preparation for this deposition today?</p> <p>18 MR. CIOFFI: Objection. Instruct him not to 19 answer.</p> <p>20 BY MR. SABA:</p> <p>21 Q. Did you read Greg Carmichael's deposition in 22 preparation for this deposition today?</p> <p>23 MR. CIOFFI: Objection. Again, as I said</p>	<p>Page 92</p> <p>1 made by the individuals from RHR?</p> <p>2 A. I don't recall.</p> <p>3 MR. SABA: If we can go off the record for a 4 second.</p> <p>5 THE VIDEOGRAPHER: Off the record at 12:22. 6 (A recess was taken from 12:24 p.m. to 7 12:40 p.m.)</p> <p>8 THE VIDEOGRAPHER: We are back on the record. 9 This is media 3 today's deposition. The time is 10 12:40.</p> <p>11 BY MR. SABA:</p> <p>12 Q. Mr. Akins, you gave me a time period before 13 for the long-term CEO. What would be the time period 14 that the emergency successor would serve?</p> <p>15 A. Typically it's just a few months.</p> <p>16 Q. Did you or any other board member communicate 17 to Mr. Spence at any time that he was far and above any 18 other internal candidate to be the next president and 19 CEO of Fifth Third Bank?</p> <p>20 A. No. Not during the time that he was being considered, no.</p> <p>21 Q. Why not?</p> <p>22 A. Because -- at least I can speak for me, not the other board members, you'd have to talk to them, but I don't have those kinds of conversations with</p>	<p>Page 94</p>
<p>1 earlier, we represent him personally and whatever 2 he read, he read at our instruction as his counsel. 3 You can -- I'll let him answer the question did he 4 read anything outside of what we instructed him to 5 read.</p> <p>6 BY MR. SABA:</p> <p>7 Q. Did you review any documents or reports from 8 RHR?</p> <p>9 MR. CIOFFI: Again, same objection.</p> <p>10 THE WITNESS: In what context are you asking?</p> <p>11 BY MR. SABA:</p> <p>12 Q. As a board member.</p> <p>13 A. Oh, yes.</p> <p>14 Q. When did you review those?</p> <p>15 A. I probably would have seen it after the board meeting.</p> <p>16 Q. After the board meeting in September of 2020?</p> <p>17 A. It's either September or December, I forgot which. September is the one I missed. So I would have seen it after that, I presume.</p> <p>18 Q. Did you ever communicate directly with anyone 19 from RHR?</p> <p>20 A. No.</p> <p>21 Q. Did you ever -- I'm referring to the time span 22 of 2019 or 2020 -- ever personally see any presentations</p>	<p>Page 93</p> <p>1 individuals before it's right, and it wasn't right. And you're talking about during the period of when the evaluation was occurring, right, before he became president?</p> <p>2 Q. Correct.</p> <p>3 A. Yeah, okay. Okay.</p> <p>4 Q. I'm talking about any time he -- I believe the 5 resolution or the resolution signed in October 2020 and 6 the meeting discussing the resolution is September 2020. 7 So let's take it any time prior to September 2020.</p> <p>8 A. Yeah. Well, the resolution was done -- because it's an AK issue from an SEC perspective -- so when -- that's when the board ultimately decides when they -- and to have a conversation beforehand would not be appropriate.</p> <p>9 Q. Would there have been a discussion with 10 Mr. Spence during the time that he was assessed by RHR 11 that he was being assessed to be CEO and president of 12 Fifth Third Bank?</p> <p>13 A. I don't know the answer to that.</p> <p>14 Q. Go ahead. Sorry.</p> <p>15 A. He would have -- he would have known that he was at least in the mix, I guess, because of the evaluation, but that's all supposition on my part.</p> <p>16 Q. Okay. You referenced an executive session or</p>	<p>Page 95</p>

<p style="text-align: right;">Page 96</p> <p>1 dinner wherein it was discussed how many individuals 2 would be assessed by RHR in 2020 to be president and CEO 3 and that a determination would be that it was just one 4 person. Was Greg Carmichael present for that 5 conversation?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you recall any comments he made 8 during that conversation?</p> <p>9 A. He asked the board -- at least this is my 10 recollection -- but he asked the board, are you 11 comfortable with either one or multiple candidates, and 12 the board responded that we were comfortable with one 13 candidate.</p> <p>14 Q. And why was the board just comfortable with 15 one candidate?</p> <p>16 A. Because we had our guy. I mean, he -- we felt 17 very positively toward his progression, and we felt like 18 that from the internal -- internal from Fifth Third, he 19 was the right person to really focus on from that 20 aspect.</p> <p>21 Q. And this determination that was made because 22 you had your guy, that was before RHR did their 23 assessment?</p> <p>24 A. No. I think, you know, board members have 25 conversations with each other in board member settings,</p>	<p style="text-align: right;">Page 98</p> <p>1 about before RHR did their assessment, correct?</p> <p>2 A. I would -- I would think that it was done when 3 they were initiated to do their review, because they 4 have to know what their scope is, and they have to know 5 what -- what they're going to look at. And the board 6 felt comfortable with looking at one person. And, 7 remember, this is not -- this is not final. I mean, RHR 8 goes off and does their thing focused on Tim Spence. If 9 they came back with some fatal flaw, something we need 10 to look at, we'd look at it.</p> <p>11 So there was no deadline, no timeline or 12 anything like that. It was really, okay, give us the 13 information that you have, we're comfortable with 14 looking at one person at this point, and we'll see where 15 it goes. Then it became a discussion we're comfortable 16 with moving forward with Tim and then under these 17 developmental actions and that falls on the transition 18 process. That's the way the transition process works.</p> <p>19 Q. Do you know if at any time RHR was retained to 20 review three people?</p> <p>21 A. I don't recall that. I don't know.</p> <p>22 Q. Other than the RHR assessment, what else did 23 the board base their determination on that Tim Spence 24 should succeed Greg Carmichael as the next president and 25 CEO of Fifth Third Bank?</p>
<p style="text-align: right;">Page 97</p> <p>1 and if we're impressed by someone, you'll talk to 2 someone and say, hey, I'm really impressed by this 3 person. That's a progression that occurs over time, and 4 then by the time it got to that meeting, it was very 5 clear that Tim Spence was favorable from a board 6 perspective and that's why the board said we're 7 comfortable with only one person.</p> <p>8 Q. You don't recall the date of that meeting, but 9 it would have been before RHR did their assessment?</p> <p>10 A. It was -- and I may be totally off base, but I 11 remember -- I remember an introduction meeting with RHR, 12 it seems like, and there was a discussion about whether 13 there was a single candidate or multiple candidates, and 14 we -- the board decided a single candidate was fine.</p> <p>15 Q. And my question is, that was before RHR did 16 their assessment, correct?</p> <p>17 A. That was before -- let's see. I think -- I'm 18 just not sure if it was before or when they came -- when 19 they did the other presentation; I'm just not sure.</p> <p>20 Q. Well, it wouldn't have made sense for them to 21 come to you after they've already done all the 22 assessments to say --</p> <p>23 A. Right.</p> <p>24 Q. So this would, from all practical standpoints, 25 it sounds like you had this meeting that you're talking</p>	<p style="text-align: right;">Page 99</p> <p>1 MR. CIOFFI: Objection. Asked and answered a 2 couple of times, but --</p> <p>3 THE WITNESS: So observations -- I can't speak 4 for the other board members -- but observations 5 that I had during the board meeting settings, 6 observations that I had during the board dinners, 7 because it's just as much -- it's just as important 8 of, you know, seeing people in those kinds of 9 settings, too. And then of course you had the 10 talent review process and you had the RHR analysis 11 and my own experience, just drawing from my own 12 experience and observing people, and then my own 13 thought process of where bank leadership needed to 14 be in the future and what they need to be focused 15 on and who had those skill sets that match that. 16 That's my thinking.</p> <p>17 Now -- and it's really important to note that 18 no matter how I came up with my thinking, the other 19 board members from their perspective came up with 20 the same thing.</p> <p>21 BY MR. SABA:</p> <p>22 Q. With respect to your reference to the talent 23 review process, you're referring to the talent decks 24 that we were looking through earlier; is that correct?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 100</p> <p>1 Q. With respect to the board dinners, explain to 2 me how those are conducted. 3 A. They're in the evenings. Usually there's a 4 reception beforehand, the executive team, leadership 5 team is there in a very casual environment, and then we 6 sit down for dinner with everyone, the board and 7 executive, and just it's really a way of meeting and 8 talking to people in a more casual environment.</p> <p>9 Q. Are you all sitting at one table? 10 A. Generally not, depending on what the space 11 was. Sometimes it was the same table, long table, 12 sometimes it was smaller tables that people had 13 assignments to sit at.</p> <p>14 Q. Throughout the years between 2015 and 15 September of 2020, how often did you sit with Tim Spence 16 at these dinners? 17 A. I don't recall. Nothing unusual. It's not 18 like I sat with Tim Spence every time or anything like 19 that. Matter of fact, it appeared to me it was the same 20 as what I did as CEO, I made sure board members were 21 scattered with people who were different than the 22 previous time. I kept track of that. I don't know if 23 they did or not, but it seemed that way because I'd be 24 sitting with different people depending on the -- 25 depending on which night it was. I mean, there never</p>	<p style="text-align: right;">Page 102</p> <p>1 (A recess was taken from 12:53 p.m. to 12:55 2 p.m.) 3 (Mr. McHugh exits the room.) 4 THE VIDEOGRAPHER: Back on the record, 12:54. 5 (Plaintiff's Exhibit 5 is marked for 6 identification.) 7 BY MR. SABA: 8 Q. Mr. Akins, I've handed you what has been 9 marked as Exhibit Number 5, which is Bates stamped Fifth 10 Third-McHugh-0213249 through Fifth Third-McHugh-0213254; 11 is that correct? 12 A. Yes, that's correct. 13 Q. Let me represent to you these are the board of 14 directors minutes for Fifth Third Bancorp for January 5, 15 2015; is that correct? 16 A. Yes. Special joint meeting, yes. 17 Q. Okay. And with respect to that meeting, you 18 attended that meeting via teleconference; is that 19 correct? 20 A. Yes, that's what it says. 21 Q. Okay. And that would have been a conference 22 call, that's not a Zoom call, correct? 23 A. Correct. 24 Q. Okay. And also as indicated by the other 25 people present, neither Phil McHugh nor Tim Spence were</p>
<p style="text-align: right;">Page 101</p> <p>1 was any consistency, if that's what you're getting at. 2 Q. Did you have assigned seats at dinner? 3 A. Generally yes, we had assigned seats. 4 Q. Who would determine who would sit where? 5 A. I have no idea. 6 Q. How frequently did you sit next to Phil McHugh 7 at the board dinners? 8 A. I don't recall. 9 Q. So other than your own personal experience and 10 opinions as CEO, the other information that you based 11 your decision on with respect to Tim Spence are the 12 observation during board meetings and dinners, the 13 talent decks, the RHR assessment. Is there anything 14 else? 15 A. Oh, and of course the CEO feedback on 16 individuals as well. 17 Q. The Greg Carmichael comments that we discussed 18 earlier, correct? 19 A. Yes. 20 Q. Anything else? 21 A. Not that I can think of. 22 MR. SABA: Can we go off the record for one 23 second? 24 THE VIDEOGRAPHER: Yes. Off the record at 25 12:52.</p>	<p style="text-align: right;">Page 103</p> <p>1 present for that meeting, correct? 2 A. That's correct. 3 MR. CIOFFI: Peter, as I said, the documents 4 speak for themselves who was there and who wasn't 5 so it seems a waste of time to go through it, but 6 go ahead. 7 (Plaintiff's Exhibit 6 is marked for 8 identification.) 9 THE WITNESS: Thank you. 10 BY MR. SABA: 11 Q. Mr. Akins, you've been handed what's been 12 marked as Exhibit Number 6, Fifth Third-McHugh-0213255 13 through Fifth Third-McHugh-0213275; is that correct? 14 A. That's correct. 15 Q. Let me represent to you these are the minutes 16 for Fifth Third Bancorp for January 20, 2015; is that 17 correct? 18 A. That's correct. 19 Q. Okay. And you attended that meeting live; is 20 that correct? 21 A. Yes. It appears so, yes. 22 Q. And indicating looking at who else was also 23 present, Mr. McHugh -- neither Mr. McHugh nor Mr. Spence 24 were present for that meeting; is that correct? 25 A. That's correct.</p>

<p>1 (Plaintiff's Exhibit 7 is marked for 2 identification.) 3 THE WITNESS: Thank you. 4 BY MR. SABA: 5 Q. Mr. Akins, I have handed you what has been 6 marked as Exhibit Number 7, Fifth Third-McHugh-0213292 7 through Fifth Third-McHugh-0213303; is that correct? 8 A. Yes, that's correct. 9 Q. And Exhibit 7 is the board of directors 10 minutes for Fifth Third Bancorp for March 16, 2015; is 11 that correct? 12 A. Yes. 13 Q. And you attended that meeting live; is that 14 correct? 15 A. Yes. 16 Q. Okay. Neither Mr. Spence nor Mr. McHugh were 17 present for that meeting; is that correct? 18 A. That's correct. 19 (Plaintiff's Exhibit 8 is marked for 20 identification.) 21 THE WITNESS: Thank you. 22 BY MR. SABA: 23 Q. Mr. Akins, I've handed you what's been marked 24 as Exhibit Number 8, Fifth Third-McHugh-0213326 through 25 Fifth Third-McHugh-0213329; is that correct?</p>	<p>Page 104</p> <p>1 Q. And neither Mr. Spence nor Mr. McHugh were 2 present for that meeting; is that correct? 3 A. That's correct. 4 (Plaintiff's Exhibit 10 is marked for 5 identification.) 6 THE WITNESS: Thank you. 7 BY MR. SABA: 8 Q. Mr. Akins, you've been handed what's been 9 marked as Exhibit Number 10, Fifth Third-McHugh-0213336 10 through 0213337; is that correct? 11 A. Yes, that's correct. 12 Q. And Exhibit Number 10 is the minutes of the 13 joint meeting of the board of directors for Fifth Third 14 Bancorp and Fifth Third Bank from May 27, 2015; is that 15 correct? 16 A. Yes, that's correct. 17 Q. And you attended that via teleconference; is 18 that right? 19 A. Yes. 20 Q. Okay. And neither Mr. McHugh nor Mr. Spence 21 were present for that meeting; is that right? 22 A. That's correct. 23 (Plaintiff's Exhibit 11 is marked for 24 identification.)</p>
<p>1 A. Yes, that's correct. 2 Q. And Exhibit 8 is the minutes for the board of 3 directors meeting for Fifth Third Bank on Tuesday, 4 March 17, 2015; is that correct? 5 A. Yes, that's correct. 6 Q. And you attended that meeting via 7 teleconference; is that right? 8 A. Yes. 9 Q. Okay. Neither Mr. Spence nor Mr. McHugh was 10 present for that meeting; is that right? 11 A. That's correct. 12 (Plaintiff's Exhibit 9 is marked for 13 identification.) 14 BY MR. SABA: 15 Q. Mr. Akins, you have been handed what's marked 16 as Exhibit Number 9, Fifth Third-McHugh-0213330 through 17 0213335; is that correct? 18 A. Yes. 19 Q. And these are the minutes from a special joint 20 meeting at Fifth Third Bancorp and Fifth Third Bank of 21 directors held on April 14, 2015; is that correct? 22 A. That's correct. 23 Q. And you were present live for that meeting; is 24 that right? 25 A. Yes.</p>	<p>Page 105</p> <p>1 BY MR. SABA: 2 Q. Mr. Akins, you've been handed what's been 3 marked as Exhibit Number 11, Fifth Third-McHugh-0213338 4 through Fifth Third-McHugh-0213343; is that correct? 5 A. Yes, that's correct. 6 Q. And Exhibit Number 11 is the minutes of the 7 meeting of the board of directors for Fifth Third 8 Bancorp dated June 15, 2015; is that correct? 9 A. Yes, that's correct. 10 Q. Okay. And you attended that meeting live; is 11 that correct? 12 A. Yes. 13 Q. And neither Mr. Spence nor Mr. McHugh attended 14 that meeting; is that correct? 15 A. That's correct. 16 (Plaintiff's Exhibit 12 is marked for 17 identification.) 18 THE WITNESS: Thank you. 19 BY MR. SABA: 20 Q. Mr. Akins, you've been handed what has been 21 marked as Exhibit Number 12, Fifth Third-McHugh-0213362 22 through Fifth Third-McHugh-0213371; is that correct? 23 A. Yes, that's correct. 24 Q. And Exhibit Number 12 is the minutes of the 25 meeting of the board of directors for Fifth Third</p>

1 Bancorp for June 16, 2015; is that correct? 2 A. That's correct. 3 Q. And you attended that meeting live; is that 4 correct? 5 A. Yes. 6 Q. And neither Mr. Spence nor Mr. McHugh attended 7 that meeting; is that right? 8 A. Yes, that's correct. 9 (Plaintiff's Exhibit 13 is marked for 10 identification.) 11 THE WITNESS: Thank you. 12 BY MR. SABA: 13 Q. Mr. Akins, you've been handed what's been 14 marked as Exhibit Number 13, Fifth Third-McHugh-0213380 15 through Fifth Third-McHugh-0213383; is that correct? 16 A. Yes, that's correct. 17 Q. All right. And Exhibit Number 13 is the 18 minutes of the joint meeting of the board of directors 19 for Fifth Third Bancorp and Fifth Third Bank for July 6, 20 2015; is that right? 21 A. Yes, that's correct. 22 Q. And you attended that meeting via 23 teleconference; is that correct? 24 A. That's correct. 25 Q. Okay. And neither Mr. McHugh nor Mr. Spence	Page 108	1 Third-McHugh-0213447; is that correct? 2 A. That's correct. 3 Q. Exhibit Number 15 is the minutes of the 4 meeting of the board of directors for Fifth Third 5 Bancorp, dated September 15, 2015; is that right? 6 A. Yes. 7 Q. And you attended that meeting live; is that 8 right? 9 A. Yes. 10 Q. Okay. And Mr. McHugh and Mr. Spence also 11 attended that meeting; is that right? 12 A. Yes. 13 Q. Do you recall if there was a dinner following 14 that meeting? 15 A. Typically there is. Not following the 16 meeting, but in the middle. 17 Q. The meeting indicates it was in North 18 Carolina, started at 8:00 a.m.; do you see that? 19 A. Yeah. That was on Tuesday. There may have 20 been committee meetings on Monday and a dinner and then 21 the meeting started at 8:00 a.m. I don't -- does it say 22 when it finished? I don't know if there was a dinner 23 after this, that's what I'm saying. 24 Q. Okay. 25	Page 110
1 were present for that meeting; is that right? 2 A. That's correct. 3 (Plaintiff's Exhibit 14 is marked for 4 identification.) 5 THE WITNESS: Thank you. 6 BY MR. SABA: 7 Q. Mr. Akins, you've been handed what's been 8 marked as Exhibit Number 14, Fifth Third-McHugh-0213400 9 through Fifth Third-McHugh-0213413; is that correct? 10 A. Yes, that's correct. 11 Q. And Exhibit Number 14 is the minutes of the 12 meeting of the board of directors for Fifth Third 13 Bancorp for September 14, 2015; is that correct? 14 A. That's correct. 15 Q. Okay. And you attended that meeting live; is 16 that correct? 17 A. Yes. 18 Q. Okay. Neither Mr. McHugh nor Mr. Spence 19 attended that meeting; is that right? 20 A. That's correct. 21 (Plaintiff's Exhibit 15 is marked for 22 identification.) 23 BY MR. SABA: 24 Q. Mr. Akins, you've been handed Exhibit 25 Number 15, Fifth Third-McHugh-0213442 through Fifth	Page 109	1 (Plaintiff's Exhibit 16 is marked for 2 identification.) 3 BY MR. SABA: 4 Q. Mr. Akins, you've been handed Exhibit Number 5 16, which is Bates stamped 0213455 through Fifth 6 Third-McHugh-0213464; is that correct? 7 A. Yes. 8 Q. And Exhibit Number 16 is the minutes of the 9 meeting of the board of directors for December 14, 2015 10 for Fifth Third Bancorp; is that right? 11 A. That's correct. 12 Q. Okay. And you were present live for that 13 meeting; is that correct? 14 A. Yes. 15 Q. And Phil McHugh was also present for that 16 meeting; is that right? 17 A. Yes. 18 Q. And Tim Spence was not present for that 19 meeting; is that correct? 20 A. I don't see his name, so I assume he was not. 21 (Plaintiff's Exhibit 17 is marked for 22 identification.) 23 THE WITNESS: Thank you. 24 BY MR. SABA: 25 Q. Mr. Akins, you've been handed what's been	Page 111

<p style="text-align: right;">Page 112</p> <p>1 marked as Exhibit Number 17, Fifth Third-McHugh-0213475 2 through Fifth Third-McHugh-0213494; is that correct? 3 A. That's correct. 4 Q. And Exhibit Number 17 is the minutes of 5 meeting of board of directors for Fifth Third Bancorp 6 for December 15, 2015; is that correct? 7 A. Yes. 8 Q. And you were present for that meeting; is that 9 correct? 10 A. Yes. 11 Q. And Mr. Spence was also present for that 12 meeting; is that correct? 13 A. That's correct. 14 Q. Mr. McHugh was not present for that meeting; 15 is that right? 16 A. His name is not on there so I assume he 17 wasn't. 18 MR. CIOFFI: Counsel, we've been doing this 19 for about half an hour. We're happy to stipulate 20 that the documents speak for themselves, and 21 whoever they indicate was present was present, and 22 if someone is not indicated as present, they 23 weren't present. It is just a waste of time. Is 24 there a purpose to this? 25 MR. SABA: There is a purpose to it.</p>	<p style="text-align: right;">Page 114</p> <p>1 A. Not all of them. I think there is a few that 2 I was not because it would match up with AEPs and so -- 3 Q. My question specifically -- 4 A. It wasn't every one. 5 Q. Was the year 2020? 6 A. 2020? 7 Q. Yes. 8 A. If it shows I wasn't there, the minutes, I 9 wasn't there. 10 Q. Okay. Let me represent to you that they show 11 that you were not in attendance in September 2020. 12 A. Okay. 13 Q. As was previously stipulated. With respect to 14 that particular meeting, do you recall being provided 15 any supplemental information or having any contact or 16 communications with any board members regarding that 17 meeting? 18 A. I mean, at some point I probably asked Marsha 19 how it went and I was told it went fine, so if there was 20 an update, it was a very general update. 21 Q. Would you have spoken to anybody other than 22 Marsha Williams? 23 A. Marsha Williams. Did I say Marsha Ryan again? 24 MR. CIOFFI: No, you said --</p>
<p style="text-align: right;">Page 113</p> <p>1 MR. CIOFFI: Well -- 2 MR. SABA: We can go off the record one 3 second. 4 MR. CIOFFI: It's hard to see. 5 MR. SABA: Hold on. 6 THE VIDEOGRAPHER: Off the record, 1:10. 7 (A recess was taken from 1:11 p.m. to 8 1:13 p.m.) 9 THE VIDEOGRAPHER: Back on the record, 1:11. 10 MR. SABA: So confirming your stipulation, you 11 will stipulate that with respect to any of the 12 minutes provided, that they accurately depict who 13 was present, who was absent, and who was present 14 via teleconference or present live; is that 15 correct? 16 MR. CIOFFI: So stipulated. 17 MR. SABA: And just to confirm, that would be 18 for all minutes from January 2015 through December 19 of 2020, correct? 20 MR. CIOFFI: Yes, correct. 21 (Phil McHugh enters the room.) 22 BY MR. SABA: 23 Q. Mr. Akins, you indicated before that you were 24 not present for the September 2020 board meetings, 25 correct?</p>	<p style="text-align: right;">Page 115</p> <p>1 BY MR. SABA: 2 Q. No, you just said Marsha. 3 A. She used to work for me at AEP, that's why -- 4 Q. All right. 5 A. No, it probably would have been Marsha. 6 Q. Did you have any conversation with Greg 7 Carmichael regarding that meeting? 8 A. I don't recall. 9 Q. Would you have been provided with the board 10 materials for that meeting? 11 A. It would have been through Boardvantage or 12 whatever the -- that they would have been provided 13 beforehand. May have been Diligent, one or the other. 14 (Plaintiff's Exhibit 18 is marked for 15 identification.) 16 BY MR. SABA: 17 Q. Mr. Akins, you've been handed what's been 18 marked as Exhibit Number 18, which is Bates stamped 19 Fifth Third-McHugh-001216 through Fifth 20 Third-McHugh-001222; is that correct? 21 A. Yes. 22 Q. Are you able to identify these documents for 23 me? 24 A. Yes. The information in the news release, the 25 note to the board on unanimous consent concerning the</p>

<p style="text-align: right;">Page 116</p> <p>appointment of Tim Spence as president of the Bancorp.</p> <p>Q. Have you seen these documents before?</p> <p>A. Yes. I signed it.</p> <p>Q. How was the unanimous consent circulated?</p> <p>A. It was sent through the -- either Diligent or Boardvantage, whichever, it was sent through -- in that fashion, and then electronically signed.</p> <p>Q. And -- I'm sorry. The unanimous consent portion is marked Fifth Third-McHugh-001221 and Fifth Third-McHugh-001222; is that correct?</p> <p>A. Yes.</p> <p>Q. And the unanimous consent is dated October 26, 2020; is that right?</p> <p>A. That's correct.</p> <p>Q. Did you have any discussion with any of the other board members regarding the unanimous consent prior to signing?</p> <p>A. Yes.</p> <p>Q. When would you have had that discussion?</p> <p>A. It would have been a previous board discussion that to expect a unanimous consent to come out and if you agreed with it, then that's when the vote would be taken.</p> <p>Q. When did that meeting take place?</p> <p>A. Was there an October board meeting? I can't</p>	<p style="text-align: right;">Page 118</p> <p>Schaffer and I discussed with you at the September board meeting, we believe that Phil McHugh could be at risk with Tim's promotion. And, in fact, Phil has decided not to accept the role of head of consumer and business banking and is leaving the company."</p> <p>Do you see that?</p> <p>A. Yes.</p> <p>Q. Did you ever have any conversations with Bob Schaffer and/or Greg Carmichael where they indicated to you that they believe Phil McHugh could be at risk with Tim's promotion?</p> <p>A. I don't recall that.</p> <p>Q. What is your understanding of why Phil McHugh was leaving the company?</p> <p>A. My understanding was he was upset with -- that he didn't get the -- didn't get to move to president and he quit.</p> <p>Q. Do you have any understanding of the details of the timing of Phil McHugh's departure?</p> <p>A. The only understanding I had was when Tim was selected, this note came out and we were put on notice that Phil had gotten upset and he decided to not accept the role that was offered to him, which was a great role in the company. He got upset, left, and he resigned.</p> <p>Q. Did you ever discuss Phil McHugh's departure</p>
<p style="text-align: right;">Page 117</p> <p>recall. I don't recall.</p> <p>Q. Let me represent to you the records we have is that the prior meeting was the September meeting, the one you did not attend.</p> <p>A. So I must have been informed of it after -- after the meeting.</p> <p>Q. Do you recall any specific conversations with anybody about this unanimous consent?</p> <p>MR. CIOFFI: Objection. Asked and answered. He just described it.</p> <p>THE WITNESS: Yeah. I knew it was coming out. I was put on notice that it would come out and it was consistent with, you know, all the board activity leading up to that point.</p> <p>BY MR. SABA:</p> <p>Q. Who put you on notice that the unanimous consent was coming out?</p> <p>A. I don't recall.</p> <p>Q. Referring you to the third page of Exhibit 18, Fifth Third-McHugh-001218.</p> <p>A. Yes, I have it.</p> <p>Q. This is a letter from Greg Carmichael to the board; is that correct?</p> <p>A. Yes.</p> <p>Q. In the second paragraph it indicates, "As Bob</p>	<p style="text-align: right;">Page 119</p> <p>with Greg Carmichael?</p> <p>A. I don't recall. I mean, after this came out, I mean, it pretty much spoke for itself. I don't know that anyone anticipated Phil deciding to resign. I mean, that was somewhat of a surprise to me, because, I mean, like I said earlier, I mean, Phil was well thought of, great utility player, should have stayed with the company, but he didn't. He got upset, resigned, probably didn't think it all the way through, that's my opinion, but I never had a conversation, you know, with Greg about why he left or anything like that.</p> <p>Q. Obviously Greg Carmichael and Bob Schaffer knew that Phil was at risk even as of September 2020; isn't that right?</p> <p>MR. CIOFFI: Objection. Lack of foundation.</p> <p>THE WITNESS: I don't know the answer to that.</p> <p>MR. CIOFFI: You can answer.</p> <p>THE WITNESS: Anybody could be at risk, I don't know.</p> <p>BY MR. SABA:</p> <p>Q. That's what the letter indicates, correct?</p> <p>A. Well, this letter says --</p> <p>MR. CIOFFI: Objection to the lack of foundation.</p>

<p>1 BY MR. SABA:</p> <p>2 Q. Go ahead. You can answer.</p> <p>3 MR. CIOFFI: Do you want to repeat your</p> <p>4 question, please?</p> <p>5 MR. SABA: Sure.</p> <p>6 THE WITNESS: Go ahead.</p> <p>7 BY MR. SABA:</p> <p>8 Q. Obviously based on the wording of the letter,</p> <p>9 Greg Carmichael and Bob Schaffer knew as of September</p> <p>10 2020 that Phil McHugh would be at risk as a result of</p> <p>11 Tim Spence's promotion?</p> <p>12 MR. CIOFFI: Objection. Lack of foundation.</p> <p>13 If you can answer.</p> <p>14 THE WITNESS: Yeah. I mean, I don't know the</p> <p>15 individual discussions or any of that, but the</p> <p>16 letter seems to indicate that -- that they</p> <p>17 discussed it previously with the board that he may</p> <p>18 be at risk. I mean, any senior executive could be</p> <p>19 at risk when there's only one job. And when you</p> <p>20 don't get it, there are people upset, people can</p> <p>21 live with it, people who can't, and that's</p> <p>22 obviously what happened, in my opinion.</p> <p>23 MR. SABA: We can go off the record.</p> <p>24 THE VIDEOGRAPHER: Off the record, 1:24.</p> <p>25</p>	Page 120	<p>1 as you testified before, it says high potential; do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. My question for you as a member of the board,</p> <p>5 separate and apart and independent of this particular</p> <p>6 document, did you have an opinion about Tim Spence's</p> <p>7 potential in December of 2019?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And what was that opinion?</p> <p>10 A. His trajectory was high, and there's no</p> <p>11 question that he had the skills required for a CEO at</p> <p>12 that particular time looking forward into the future.</p> <p>13 He was very adept, very communicative. He certainly</p> <p>14 could go to any level of detail that you wanted to go</p> <p>15 in, very attuned to the strategic aspects of the banking</p> <p>16 industry, but he as a person -- you could tell he was a</p> <p>17 constant learner, but also somebody who would be a great</p> <p>18 cultural fit as a CEO.</p> <p>19 And that was my own personal feelings as he</p> <p>20 developed, and there's no question in my mind that it</p> <p>21 ultimately was the right decision.</p> <p>22 Q. Did you have discussions with your fellow</p> <p>23 board members about Tim Spence's potential?</p> <p>24 A. Well, I -- you have regular board chatter, and</p> <p>25 there was no question that people were impressed by Tim</p>	Page 122
<p>1 (A recess was taken from 1:24 p.m. to 1:33</p> <p>2 p.m.)</p> <p>3 THE VIDEOGRAPHER: Back on the record, 1:33.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Mr. Akins, did you ever hear any of the board</p> <p>6 members or any of the enterprise committee or Fifth</p> <p>7 Third employees refer to Phil McHugh as the Silver Fox?</p> <p>8 A. No, I did not.</p> <p>9 MR. SABA: That is all the questions I have at</p> <p>10 this time, continued in progress with respect to</p> <p>11 other issues that may arise, but that's all I have.</p> <p>12 MR. CIOFFI: As you know our position, it is</p> <p>13 that you don't have the right to continue it in</p> <p>14 progress, but the court will eventually decide. I</p> <p>15 do have a couple of questions.</p> <p>16 THE WITNESS: Yeah.</p> <p>17 EXAMINATION</p> <p>18 BY MR. CIOFFI:</p> <p>19 Q. And if you look at Exhibit Number 4, please,</p> <p>20 first turn to page 1135 if you would. You testified</p> <p>21 previously that this is the talent card that was</p> <p>22 prepared by management concerning Tim Spence; is that</p> <p>23 correct?</p> <p>24 A. Yes, that's correct.</p> <p>25 Q. Looking at the box that's captioned potential</p>	Page 121	<p>1 Page 121</p> <p>1 Spence.</p> <p>2 Q. Based on those discussions, do you know what</p> <p>3 the other board members' opinions were with respect to</p> <p>4 Tim Spence's potential?</p> <p>5 A. Yes. Yes, it was clear.</p> <p>6 Q. And what was it?</p> <p>7 A. Board members are looking for -- based on the</p> <p>8 conditions we're in, based the state of the company, the</p> <p>9 life of the company and where he is, but also the skills</p> <p>10 necessary, the things that we were trying to approach</p> <p>11 from a competitive standpoint, particularly the online</p> <p>12 banking when COVID hit, that even further accentuated</p> <p>13 it, there is no question that he had those abilities.</p> <p>14 But apart from that, his temperament, the way</p> <p>15 he approached things that we saw, certainly the depth of</p> <p>16 understanding of the strategic nature of the banking</p> <p>17 industry, the ins and outs, the contacts, all those</p> <p>18 things, they seemed very fluid to him and that said to</p> <p>19 us that, I mean, he was impressive from that</p> <p>20 perspective. And when you're thinking about the future</p> <p>21 of the bank, particularly in that environment, you</p> <p>22 needed a CEO with a vision, and he actually did a</p> <p>23 strategic plan. So it was really important to have that</p> <p>24 kind of skill set at the CEO level.</p> <p>25 Q. Separate and apart from this particular</p>	Page 123

<p style="text-align: right;">Page 124</p> <p>1 document, 1135, did your fellow board members share 2 those opinions about Tim Spence?</p> <p>3 A. Yes, they did.</p> <p>4 Q. Looking at the next box right below that, it 5 talks about potential next positions.</p> <p>6 A. Yes.</p> <p>7 Q. And then it says, "President one to two years, 8 CEO three-plus years." Separate and apart from this 9 document and independent of this document, did you have 10 an opinion about Tim Spence's potential in terms of 11 these positions?</p> <p>12 A. Yes.</p> <p>13 Q. And what was your opinion?</p> <p>14 A. I thought that -- and, again, this is a snapshot, and my only impression that was he was on a steep trajectory and these time frames could change. And it was very flexible given where Greg was and where he was at that particular time.</p> <p>15 Q. And, in fact, did these time frames 16 articulated in 2019 in fact come to be true?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. Based on your discussions with your fellow 19 board members, did they also share the opinions you just 20 expressed about Tim Spence's potential for next 21 positions?</p>	<p style="text-align: right;">Page 126</p> <p>1 the company. I think that bode well for his future in terms of his ability to help Tim. I had the same condition at AEP, and I recognized that in Phil. The moderate potential just says that he's reached a plateau that's appropriate for him and he's well placed.</p> <p>2 Q. Did you agree with the assessment of moderate 3 potential in December of 2019?</p> <p>4 A. Yes.</p> <p>5 Q. Based on your discussions with the other board 6 members and separate and independent of this particular 7 document, did they share that view of yours?</p> <p>8 MR. SABA: Objection.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. CIOFFI:</p> <p>11 Q. If you look at the next box where it says 12 potential next positions, you see --</p> <p>13 A. Yes.</p> <p>14 Q. -- it says, "Expand current responsibilities 15 to include middle market leadership."</p> <p>16 A. Yes.</p> <p>17 Q. Again, separate and independent of this 18 document, did you have an opinion as to the appropriate 19 next positions for Phil McHugh?</p> <p>20 A. Well, I certainly felt like that this would be a really great move to expand his abilities to look at a</p>
<p style="text-align: right;">Page 125</p> <p>1 MR. SABA: Objection.</p> <p>2 THE WITNESS: Yes, as far as I know.</p> <p>3 BY MR. CIOFFI:</p> <p>4 Q. I want to direct your attention to 1132 in the 5 lower right-hand corner. Fifth Third-McHugh-001132, 6 would you look at that?</p> <p>7 A. Yes.</p> <p>8 Q. And what is that particular document?</p> <p>9 A. That's Phil McHugh's sheet for the talent management.</p> <p>10 Q. Again, looking at the box which is captioned 11 potential, it says next to that moderate potential; do 12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Separate and apart from this document and 15 independent of this document, did you have an opinion in 16 December of 2019 about Phil McHugh's potential?</p> <p>17 A. Yes. And I said this previously, I felt he was a utility player. He was sort of a Steady Eddie in his role. He could move to other roles because of his ability to work with multiple parts of the organization. He obviously knew many people in the organization, could bring them together. To me, he was -- he was more of a chief operating officer type and, you know, he was -- to me, he was more introverted, more focused internally to</p>	<p style="text-align: right;">Page 127</p> <p>1 broad view of the enterprise from an operational perspective. I was very comfortable when he made the change to include wealth management and because he had that ability to go across the organization.</p> <p>2 So the middle marketing piece was the part that he could continue to develop with and continue being a great employee for the future. I mean, that's what I was thinking.</p> <p>3 Q. And separate and apart from this particular 4 document, did your fellow board members, based on your 5 discussions with them, have similar views as yours about 6 his next positions?</p> <p>7 MR. SABA: Objection.</p> <p>8 THE WITNESS: Yes, so far as I know.</p> <p>9 BY MR. CIOFFI:</p> <p>10 Q. Yeah. In any of the discussions about Greg 11 Carmichael's successor, did the board at any time 12 discuss age as a factor in making that decision?</p> <p>13 A. No.</p> <p>14 Q. Did --</p> <p>15 A. No.</p> <p>16 Q. -- in fact age play any factor in the board's 17 determination of who should succeed Greg Carmichael as 18 president and then eventually CEO?</p> <p>19 A. No.</p>

<p>1 Q. I have no --</p> <p>2 A. It was clearly based upon the factors we felt like in the market, as I've said several times, how Tim fit within those primary areas that were important for the bank moving forward. That was -- that was the focus there. But if someone else were to have those, then they would have been included in the list, but they weren't.</p> <p>3 Q. And what were those areas again, just for the</p> <p>4 record?</p> <p>5 A. Well, first of all, he had many contacts within the industry, banking. He also had very fluent knowledge of the state of banking and the issues that we're dealing with. Certainly the technical side, technology side of it with Fintech, with other aspects from a strategic nature with M&A, those were clearly areas that he was well-versed in.</p> <p>6 And he also had a great ability to communicate 7 those variances within the banking industry, who was 8 thinking what and who's likely to move this way or that 9 way in terms of banking, you know, bank M&A and so 10 forth. He had a very good understanding.</p> <p>11 So there's no question in my mind that he 12 would have hit the ground running with investors and 13 would have -- because I've been involved with a lot of</p>	<p>Page 128</p> <p>1 Q. Okay. Does 2014, '15 sound about right?</p> <p>2 A. Yeah. It's been several years. Particularly I sort of mark things when Greg became CEO, and there you saw Tim start to really -- really show up, but -- and obviously for obvious reasons.</p> <p>3 Q. Yeah. And prior to being hired by the bank, 4 for how many years at Oliver Wyman had Tim Spence been 5 making and developing the strategic plan for the bank?</p> <p>6 A. Several years.</p> <p>7 Q. So by the time the decision was made in 2020, 8 he had been, in fact, creating the strategic plan and 9 vision for the bank for six to eight years; is that 10 correct?</p> <p>11 A. Yes. Yes.</p> <p>12 MR. SABA: Objection.</p> <p>13 MR. CIOFFI: I have no further questions.</p> <p>14 FURTHER EXAMINATION</p> <p>15 BY MR. SABA:</p> <p>16 Q. Mr. Akins, you previously indicated that the 17 input for making your determinations regarding 18 Mr. Spence were your observations during the board 19 settings, the talent deck, the RHR assessment, and then 20 your own experience, correct?</p> <p>21 A. Yes. Did you mention Greg Carmichael's --</p> <p>22 Q. And Greg Carmichael's comments.</p>
<p>1 one-on-ones, a lot of investor conferences, a lot of activities that the CEO has to be -- have the foundation to think on his feet or -- his or her feet, and make sure that they can respond very quickly, very adeptly, and communicate in a very clear and concise fashion. He had those skills.</p> <p>2 Q. I want to direct your attention to Exhibit</p> <p>3 Number 18, if you would, please, which is the unanimous</p> <p>4 written consent; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And prior to this unanimous written consent in</p> <p>7 October of 2020, for how many years prior to this</p> <p>8 appointment as president had Tim Spence been making the</p> <p>9 strategic plan for the bank?</p> <p>10 A. Well, he made a strategic plan even before he joined the bank with Oliver Wyman, and then -- and then after that, he was involved with every step of the way and brought in other strategic people to support him as well. So he's -- he was, certainly from a talent perspective, he brought in the right talent.</p> <p>11 Q. So when --</p> <p>12 A. Several years.</p> <p>13 Q. Do you know when he was hired from Oliver</p> <p>14 Wyman by the bank?</p> <p>15 A. I don't know the exact year.</p>	<p>Page 129</p> <p>1 A. Okay. All right.</p> <p>2 Q. And Mr. Cioffi then asked you about the high</p> <p>3 potential given to Mr. Spence that's referenced in the</p> <p>4 talent deck, and he said separate and apart from that</p> <p>5 talent deck, did you have an opinion regarding his</p> <p>6 potential, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Which would mean if you remove the</p> <p>9 talent deck, then the only other inputs would be the</p> <p>10 observations during the board settings, the RHR</p> <p>11 assessment, and the comments from Greg Carmichael,</p> <p>12 correct?</p> <p>13 A. And my own experience.</p> <p>14 Q. And your own experience, correct?</p> <p>15 A. Yes.</p> <p>16 Q. But the inputs regarding Mr. Spence, the</p> <p>17 objective data, is the observations, the RHR assessment,</p> <p>18 and the comments from Mr. Carmichael, correct?</p> <p>19 A. Can you repeat that question?</p> <p>20 Q. Sure. The -- you're bringing your own</p> <p>21 personal experience in, you said that, you know --</p> <p>22 A. Yes.</p> <p>23 Q. -- from what you have seen. You're using your</p> <p>24 own personal experience to evaluate the information</p> <p>25 you're given about Tim Spence, correct?</p>

<p style="text-align: right;">Page 132</p> <p>A. That's correct.</p> <p>Q. Okay. And the information, the sources of information about Tim Spence, you had identified four sources. You identified the comments by Mr. Carmichael, the observations made of Mr. Spence during board settings, the talent deck, and the RHR assessment, correct?</p> <p>A. Yes.</p> <p>Q. Okay. So in Mr. Cioffi's question, if we take away the talent deck, that just leaves the three other portions of the assessment, the observations --</p> <p>A. Was it three or four?</p> <p>Q. Well, there were four total, the RHR assessment, Mr. Carmichael's comments, the talent deck, and the observations at the board setting, correct?</p> <p>A. And my own experience.</p> <p>Q. Yeah.</p> <p>A. Did you cover that?</p> <p>Q. Your own experience. As we discussed, your own experience is taking those inputs and determining that, correct?</p> <p>A. No. My own experience, too, is observing executive talent. It's a lot more than just looking at objective -- objective data.</p> <p>Q. Without any --</p>	<p style="text-align: right;">Page 134</p> <p>MR. SABA: Because you're interrupting me. It's my deposition, not yours.</p> <p>MR. CIOFFI: You're interrupting the witness.</p> <p>BY MR. SABA:</p> <p>Q. Mr. Akins --</p> <p>MR. CIOFFI: He's allowed to finish his answer.</p> <p>BY MR. SABA:</p> <p>Q. Mr. Akins --</p> <p>MR. CIOFFI: Do you have more to say?</p> <p>THE WITNESS: Yes.</p> <p>MR. SABA: Okay.</p> <p>MR. CIOFFI: Please finish your answer.</p> <p>MR. SABA: Look, I'll let you finish your --</p> <p>BY MR. SABA:</p> <p>Q. Mr. Akins, without --</p> <p>MR. CIOFFI: No, finish your answer.</p> <p>BY MR. SABA:</p> <p>Q. Without -- without -- are you --</p> <p>MR. CIOFFI: Counsel --</p> <p>BY MR. SABA:</p> <p>Q. I want to know this question, Mr. Akins.</p> <p>MR. CIOFFI: Counsel --</p>
<p style="text-align: right;">Page 133</p> <p>A. I don't -- I don't view my -- I don't view my --</p> <p>Q. Well, so let me ask the question --</p> <p>MR. CIOFFI: Counsel, let him answer the question.</p> <p>MR. SABA: Let me ask the question this way.</p> <p>MR. CIOFFI: No, no, no, no, let him finish.</p> <p>Were you finished with your answer?</p> <p>MR. SABA: I have a different question.</p> <p>MR. CIOFFI: Were you finished with your answer?</p> <p>MR. SABA: Here's my question.</p> <p>MR. CIOFFI: No, Counsel, he wasn't finished.</p> <p>Let him finish.</p> <p>MR. SABA: I wasn't finished with my question.</p> <p>MR. CIOFFI: He was answering your last question when you started another question.</p> <p>MR. SABA: Let's --</p> <p>MR. CIOFFI: Allow him to finish.</p> <p>MR. SABA: Allow me to finish.</p> <p>MR. CIOFFI: No. Allow him to finish.</p> <p>MR. SABA: No. Allow me to finish. We can go on for hours, but let -- just --</p> <p>MR. CIOFFI: Why are you doing that?</p>	<p style="text-align: right;">Page 135</p> <p>BY MR. SABA:</p> <p>Q. Without any input regarding Mr. Spence, so if you take away the observations from the board meetings, if you take away the information in the talent deck, you take away the RHR assessment, you take away any comments from Mr. Carmichael, what information would you have available to you to decide that Mr. Spence should be the next president and CEO of Fifth Third Bank?</p> <p>MR. CIOFFI: And I'm going to instruct the witness, before he answers that question, to finish your answer to the previous question.</p> <p>THE WITNESS: I was going to say that it's important -- I don't view my experiences as being entirely subjective. There's objective things that I see in people, how they're utilized within an organization, how the CEO decides how to utilize that talent within the organization, and so I don't view that as subjective. So you can add that to the objective list.</p> <p>The other things you mentioned, yes, outside of -- outside, if you took one out, there's still, in my mind, four to go.</p> <p>BY MR. SABA:</p> <p>Q. So let's go back then. Take away the observations you made of Mr. Spence at any board</p>

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1 settings, take away the RHR assessments, take away the
 2 talent deck, and take away Mr. Carmichael's comments to
 3 you, are you then in a position to decide oh, yeah
 4 Mr. Spence should be the next CEO and president of Fifth
 5 Third Bank, if you take away all that information?
A. That's speculative because it never
happened.
 Q. Well, there would be nothing to base a
 decision on; isn't that right?
A. I didn't have that. I had all those that you
mentioned.
 Q. That's correct. And without those, without
 that information, there would be nothing to base that
 decision on?
 MR. CIOFFI: Objection. It's argumentative
 and calls for speculation.
BY MR. SABA:
 Q. You used your own experience to process that
 information, right?
A. My job as a board member is to have those
inputs. I had the inputs. The decision was made. So
to say one's missing or another's missing, they're not
missing, they're there.
 Q. So going back to Mr. Cioffi's question, you
 couldn't say that that was missing, how that affected

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1 your decision because you had the talent deck indicating
 2 high potential; is that right?
A. Could you repeat that, please?
 Q. Sure. You said, I can't -- I can't speculate
 5 if one of those items are missing. The premise of
 6 Mr. Cioffi's question to you was, take away the talent
 7 deck and would you still evaluate Mr. Spence as having
 8 high potential? And you said yes. And you said you can
 9 speculate --
A. No, no.
 MR. CIOFFI: Hold on.
 THE WITNESS: Okay.
 MR. CIOFFI: Objection to the form of the
 question, it's compound. That wasn't my question.
 Misstates the question. My question was, did he
 form an opinion separate and independent of the
 talent deck, not that it didn't exist. But your
 question is totally argumentative and calls for
 speculation. That's my objection. Do you have an
 answer to his question?
 THE WITNESS: Yeah. I'll say as a former CEO
 and certainly as a board member, the job really is
 making a decision based upon the facts that are
 available to you. I make a lot of decisions based
 upon whether this thing is missing or that thing is

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1 missing, I make a decision based upon the input
 2 available to me. That's what I did here.
BY MR. SABA:
 Q. Okay. And the facts available to you were the
 observations that you made of Mr. Spence during the
 board settings, the RHR assessments, correct?
A. Correct.
 Q. And the talent deck, correct?
A. Correct.
 Q. And the comments from Mr. Carmichael,
 correct?
A. Yes. And my own experiences.
 MR. CIOFFI: Objection to the form of the
 question. It's incomplete. It's also the
 observations of Mr. McHugh. He testified about
 that. So, you know, you're mischaracterizing his
 testimony and arguing with him. The record's clear
 what he already testified to.
 MR. SABA: It is. We are just talking about
 Mr. Spence right now.
BY MR. SABA:
 Q. In terms of those inputs regarding Mr. Spence,
 if you take away the observations at the board meetings,
 if you take away the talent deck, the RHR assessment,
 and Mr. Carmichael's comments, you have no information

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1 regarding Mr. Spence, correct?
 MR. CIOFFI: Objection. Speculative. If you
 can answer, you can answer. If you can't, you
 can't.
 THE WITNESS: I can't answer that. It's
 pretty meaningless.
BY MR. SABA:
 Q. But what other sources of information did you
 have --
A. I don't need other sources. I have all these
sources you just mentioned.
 Q. That's correct. What other -- you had no
 other sources of information specifically regarding
 Mr. Spence other than those four, correct?
A. I had -- I had all the ones that you
listed.
 Q. Correct. Those four items, correct?
A. Was it four or five? Go through the list
again.
 Q. Sure. It's the observations you made
 during the board settings. It is the talent deck.
 It is the RHR assessment and the comments made by
 Mr. Carmichael?
A. And my own experiences, five.
 Q. Okay. But you had no independent experiences

1	with Mr. Spence outside those four sources of 2 information, did you?	Page 140
3	A. No independent experiences, what does that mean?	
4	Q. Correct. You had no interaction with 5 Mr. Spence other than the information provided from your 6 observations, from the talent deck, the RHR assessment, 7 and the comments made by Mr. Carmichael, you had no 8 other interactions or communications with Mr. Spence in 9 any fashion?	
10	A. I don't recall any, other than the board dinners, that kind of thing.	
11	Q. Correct. Which we included in those 12 observations.	
13	A. Included in the board observations.	
14	Q. Correct. Whenever those would happen to occur, correct.	
15	A. So that's correct.	
16	Q. Okay. And that's also true for Mr. McHugh?	
17	A. That's true.	
18	Q. It's the same information, excluding the RHR assessment. There was no RHR assessment regarding 19 Mr. McHugh, correct?	
20	A. That's correct.	
21	Q. With respect to the strategic plans that are	
22	1 prepared for Fifth Third Bank, are you aware of the 2 involvement that all the members in the enterprise 3 committee have in the preparation of those strategic 4 plans?	Page 141
5	A. I'm not aware to what extent, no.	
6	Q. You don't know what the sources of all the 7 information is that creates those strategic plans; is 8 that right?	
9	A. No.	
10	MR. SABA: That's all I have. Continued in 11 progress.	
12	MR. CIOFFI: Same objection to continuing in 13 progress. I have no further questions.	
14	MR. SABA: Thank you Mr. Akins.	
15	THE VIDEOGRAPHER: We are off the record at 16 1:55.	
17	THE COURT REPORTER: Mr. Cioffi, do you want 18 signature?	
19	MR. CIOFFI: Yes, we will review and sign.	
20	THE COURT REPORTER: And, Peter, are you going 21 to order the transcript?	
22	MR. SABA: Yes.	
23	THE COURT REPORTER: Regular delivery?	
24	MR. SABA: Yes, thank you.	
25	THE COURT REPORTER: And, Mike, do you want a	

1 copy?

2 MR. CIOFFI: Yes, same with us.

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NICHOLAS KEVIN AKINS

7

8

DATE

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DEPOSITION ADJOURNED AT 1:57 p.m.

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1 C E R T I F I C A T E

2 STATE OF OHIO :
3 COUNTY OF HAMILTON : SS

4 I, Wendy L. Raymer, RPR, CRR, the undersigned,
5 a duly qualified and commissioned notary public within
6 and for the State of Ohio, do hereby certify that before
7 the giving of his aforesaid deposition, NICHOLAS KEVIN
8 AKINS was by me first duly sworn to depose the truth,
9 the whole truth and nothing but the truth; that the
10 foregoing is the deposition given at said time and place
11 by NICHOLAS KEVIN AKINS; that said deposition was taken
12 in all respects pursuant to stipulation of counsel; that
13 I am neither a relative of nor employee of any of the
14 parties or their counsel, and have no interest whatever
15 in the result of the action; that I am not, nor is the
16 court reporting firm with which I am affiliated, under a
17 contract as defined in Civil Rule 28 (D).

18 IN WITNESS WHEREOF, I hereunto set my hand and
19 official seal of office at Cincinnati, Ohio, this 17th
20 day of July, 2024.

21
22
23
24 My Commission expires
25 December 6, 2026

S/Wendy L. Raymer, RPR, CRR
Notary Public - State of Ohio

1 1 DEPOSITION ERRATA SHEET

2 Date Taken: July 2, 2024

3 Case Caption: PHILIP R. MCHUGH

4 vs. FIFTH THIRD BANCORP, et al.

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury

7 that I have read the entire transcript of

8 my deposition taken in the captioned matter

9 or the same has been read to me, and

10 the same is true and accurate, save and

11 except for changes and/or corrections, if

12 any, as indicated by me on the DEPOSITION

13 ERRATA SHEET hereof, with the understanding

14 that I offer these changes as if still under

15 oath.

16 Signed on the _____ day of

17 _____, 20____.

18 _____
19 NICHOLAS KEVIN AKINS

1 2 DEPOSITION ERRATA SHEET

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24 NICHOLAS KEVIN AKINS

25 _____

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